Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1971

No. ..... 71 - 563

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. McMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,

Petitioners,

vs.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church and representing all others similarly situated,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

SCHWEPPE, DOOLITTLE, KRUG & TAUSEND
ALFRED J. SCHWEPPE
PETER E. PAGET
Attorneys for Petitioners

Office and Post Office Address:
657 Colman Building
Seattle, Washington 98104
MAin 3-7520

CRAFTSMAN & MET PRESS [redacted] SEATTLE, WASHINGTON

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vs.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church and representing all others similarly situated,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Certiorari is respectfully sought to review a final judgment of the Supreme Court of the State of Washington, which awarded possession of the respondent Laurelhurst Presbyterian Church's property to respondents, in violation, petitioners submit, of the First and Fourteenth Amendments of the Constitution of the United States and controlling decisions of the Supreme Court of the United States.

OPINIONS BELOW

The opinion rendered in the trial court in Seattle by the Honorable William J. Wilkins, Judge of the Superior Court of King County, Washington, is reprinted in Appendix A.

The opinion of the Supreme Court of the State of Washington (79 Wn.2d 367, 485 P.2d 615) is reprinted in Appendix B.

STATEMENT OF JURISDICTIONAL GROUNDS

(i) The date of the final judgment sought to be reviewed is July 23, 1971 and it was entered on that date. A copy of the final judgment is reprinted in Appendix C.

(ii) A rehearing was denied on July 23, 1971.

(iii) The statutory provision believed to confer on this court jurisdiction to review the decree on certiorari is 28 U.S.C. 1257.

(iv) The execution of the judgment was stayed by the court below pending final disposition by this court of this application for a writ of certiorari by stay order entered on July 30, 1971.

QUESTIONS PRESENTED FOR REVIEW

1. Did not the Supreme Court of the State of Washington violate the First Amendment in divesting petitioner Laurelhurst Church of the possession and enjoyment of its church property by enforcing a purely ecclesiastical decision made after detailed procedures under an elaborate ecclesiastical book of order—a strictly religious document by self-description—and in supporting this divestiture by *Watson v. Jones*, 13 Wall (80 U.S.) 679 (1871), misconstrue and misapply *Watson v. Jones*, as recently construed and limited by this court in *Presbyterian Church in the*

United States v. Hull Memorial Church, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969), certiorari denied on second review of Georgia case after remand, 396 U.S. 1041, 24 L.Ed.2d 693, 90 S.Ct. 680 (1970); and in *Maryland & Virginia Eldership, etc. v. Church of God*, 393 U.S. 528, 21 L.Ed.2d 750, 89 S.Ct. 850 (1969), remanding 294 Md. 650, 241 A.2d 691 (1968), and dismissing appeal from second Maryland decision, 254 Md. 162, 254 A.2d 162 (1969) in 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499 (1970)?

2. Did not the Supreme Court of the State of Washington by accepting ecclesiastical procedure and practice under a religious Book of Order for divestiture of church property, patently and completely fail, under the First Amendment, to determine the right to church property by purely "neutral principles of law developed for use in *all* property disputes," as commanded in *Hull, supra*, 393 U.S. 440, 449, 396 U.S. 1041, and *Church of God, supra*, 393 U.S. 528, 396 U.S. 367? In other words, how can a principle of law be "neutral," "developed for use in *all* property disputes," if it accepts the ecclesiastical decision of one of the parties made under elaborate ecclesiastical rules?

3. Did not the Supreme Court of the State of Washington, in deciding a church property dispute, violate the First Amendment, when it determined from the trial court's finding in the record that the United Presbyterian Church in the U.S.A. is an "hierarchical structure," a determination which necessarily requires examination of the religious doctrines of the church and a conclusion thereon, and did it not by so doing make a doctrinal determination and

judicially "establish" a church to which property is awarded, and judicially establish the New Confession of 1967, in defiance of *Hull, supra*, 393 U.S. 440, 449, 396 U.S. 1041.

4. Did not the Supreme Court of the State of Washington egregiously err in holding that *Hull, supra*, 393 U.S. 440, follows *Watson v. Jones, supra*, in holding that civil courts can enforce ecclesiastical decrees?

5. Did not the Supreme Court of the State of Washington violate the First Amendment in holding that

> "The record title is in the First United Presbyterian Church of Seattle, a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church and is governed by a session which must act in accord with that discipline",

and by this reasoning through the medium of internal church law and practice vest title and control in the respondent Presbytery?

6. Does not the decision of the Supreme Court of the State of Washington unconstitutionally deny to petitioners their freedom of religion to adhere to the historic Westminster confessional documents and to enjoy their church property in so doing? *Maryland and Virginia Eldership v. Chuch of God*, 396 U.S. 367 (1970), dismissing appeal from 254 Md. 162 (1969).

CONSTITUTIONAL PROVISIONS

The Constitutional provisions involved are:

FIRST AMENDMENT

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Code, *Constitution Amendments*, p. 4

FOURTEENTH AMENDMENT

"Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Code, *Constitution Amendments*, p. 6

The First Amendment is binding on the States through the Fourteenth Amendment. *Hull, supra*, 393 U.S. 440.

STATEMENT OF THE CASE

This case involves a dispute over right to ownership and possession of real and personal property held by the United Laurelhurst Presbyterian Church, Inc., a State of Washington corporation (hereinafter sometimes referred to as the Laurelhurst Church), a former congregation of the United Presbyterian Church in the United States of America (hereinafter sometimes referred to as United Presbyterian Church or national church) and represented in the Seattle, Washington area by respondent The Presbytery of Seattle, Inc. (hereinafter sometimes referred to as Presbytery). The petitioner, Dr. James R. Rohrbaugh, is the pastor of the Laurelhurst Church, and he files this petition, along with the Laurelhurst Church corporation, and the various officers of the corporation and the church.

The property, both real and personal, was purchased by the congregation of the Laurelhurst Church, located in the City of Seattle. The record title has at all times material herein been, and is now, in the petitioner (defendant below) United Laurelhurst Presbyterian Church, Inc. duly incorporated under the laws of the State of Washington, controlled by trustees elected pursuant to statute.

In this action the respondent (plaintiff below) The

Presbytery of Seattle, Inc., a Washington corporation, representing the National United Presbyterian Church, and comprising some 63 Presbyterian congregations in the Seattle area, seeks to obtain possession and ownership of the Laurelhurst Church.

The dispute arises as follows:

Prior to May 22, 1967, the United Presbyterian Church in the United States of America (the national church) had for its Confession the three historic Westminster documents, namely, the Westminster Confession of Faith, the Larger Catechism, and the Shorter Catechism, agreed on three centuries ago. See The Constitution of the United Presbyterian Church in the U.S.A., 1965-66, Exhibit 8.

In May of 1967, the United Presbyterian Church in the United States of America (the national church), by action of its General Assembly, adopted a new Confession, called the "Confession of 1967." This new Confession made substantial changes in its historic doctrines and beliefs. See The Confession of 1967 (Exhibit 2). It incorporated The Nicene Creed, the Apostles Creed, the Scots Confession, the Heidelberg Catechism, the Second Helvetic Confession, the Westminster Confession of Faith, the Shorter Catechism, and the Theological Declaration of Barman, and at the same time eliminated from its Constitution the Larger Catechism, containing the detailed exposition of important historical Presbyterian doctrines, thus adding several new theological statements, and excising some important Presbyterian beliefs not elsewhere stated. It also included political and social pronouncements on various secular issues.

Parenthetically, the trial court found that there was

"abundant proof of substantial change in doctrine." St. 1047; Appendix A.

For some years there was much national concern and debate within the United Presbyterian Church over the proposed confessional changes. They were adopted by the General Assembly with a substantial dissenting vote on May 22, 1967. Exhibits 23, 27, 29. Deeply disturbed by this adoption, as were many other congregations of the national church (Exhibit 30), and desiring to adhere to the three historic Westminster confessional documents, the Laurelhurst congregation carefully pondered withdrawal from the national body. Two polls, taken several months apart, showed an overwhelming desire on the part of the congregation to withdraw from the national body because of the latter's departure from doctrine. Regular meetings of the membership of the Laurelhurst Church corporation, and of the congregation were held on October 5, 1967. The corporation and the congregation voted to withdraw from the national church by a vote of 183 to 11 (Statement of Facts (Reporter's transcript of testimony under State of Washington practice hereinafter abbreviated "St.") 397, 447-8; Ex. 13). On that date they renounced the jurisdiction of the national church. St. 510

As a result of this action, the Presbytery of Seattle, representing the national church, demanded possession of the church property and removal of its pastor and made various procedural moves under the religious laws and practices of the church to obtain possession and control.

On refusal, this action was commenced by Presbytery to obtain possession and control of the church property and to remove the pastor.

The complaint alleged its representative capacity for

the national church; that the national church was a religious body which under its ecclesiastical law had a presbyterian form of government, *i.e.*, that the various component parts of the organization were integral parts of a single sovereign church, and that each part was not an independent or congregational unit. (Denied by Petitioners in their answer. See Transcript.)

The complaint, while acknowledging title and record ownership of the church property in the petitioner Laurelhurst Church corporation, alleged that the action of the Laurelhurst Church and congregation was void in that it was contrary to the constitution of the national church, and further that no individual church could withdraw from the denomination and retain its property to the exclusion of plaintiffs and the national church.

Respondents then alleged that they had taken proper procedural steps under church law to obtain possession of the church but that the defendants refused.

Relief requested was a temporary and permanent injunction intended to oust Dr. Rohrbaugh as pastor, take ownership and possession of the Laurelhurst Church property away from the Laurelhurst church corporation and its statutory trustees, and give control to the plaintiff Presbytery.

In their answer defendants Rohrbaugh and Laurelhurst Church (petitioners here) denied the plaintiffs' claim that the national church was an "hierarchical" church, and any jurisdiction of plaintiff Presbytery over defendants, and further alleged that the ownership of the Laurelhurst Church property being in the Laurelhurst Church corporation, the national church had forfeited its rights, if any it had, as a result of major and substantial changes in

historic Presbyterian doctrine made by it in adopting the new Confession of 1967 on May 22, 1967.

An attempt by plaintiff Presbytery to obtain immediate possession of the church property by injunction was denied by the Superior Court in Seattle on December 21, 1967.

On January 31, 1968, trial commenced before the Honorable William J. Wilkins, without a jury. After eight days of trial devoted largely to "departure from doctrine" evidence which was at that time (before the *Hull* and *Church of God* cases in this Court) deemed by petitioners to be controlling, final argument was postponed to allow parties to effect a reconciliation if possible, and to await decision of a similar case which was then pending before the Supreme Court of the United States on writ of certiorari to the Supreme Court of the State of Georgia. *Hull*, 224 Ga. 61, 159 S.E.2d 690 (1968).

At the time this case was commenced and tried, the applicable law was deemed by petitioners to be:

> "No denomination, however, can exercise its share of control over a local congregation so as to require the property of the latter to be used for the propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local church united with the denomination . . . *In such case those who adhere to the original constitution and confession of faith are entitled to the use of the property.*" 76 CJS, Religious Societies § 70, p. 849. (Emphasis added)

This statement of law in the State of Washington at the time was recorded in *Seventh Elect Church of Israel v. Dexter Horton Bank*, 167 Wash. 472, 478-9, 10 P.2d 207, where the Washington court said:

> "And the courts, when called upon, will award the property, and all rights pertaining thereto, to those who continue to adhere to the doctrine, tenets, and rules of the church as they existed before the division." (Citing many cases.)

The Supreme Court of Georgia had made a similar ruling in the *Hull* church case below, 224 Ga. 61, 159 S.E.2d 690 (1968), reversed and remanded in *Hull*, 393 U.S. 440 (January 27, 1969), title awarded to local churches on remand, 225 Ga. 259, 167 S.E.2d 685 (1969), certiorari denied 396 U.S. 1041.

At the trial before Judge Wilkins petitioners proved substantial changes in doctrine. Judge Wilkins found that there was "abundant proof of substantial change in doctrine." (St. 1047; Appendix A)

On the record, petitioners had proved their case, namely, a substantial change in religious doctrine, as the law then stood and their right to retain possession of the church property.

Hull, 393 U.S. 440, came down on January 27, 1969, reversing the Georgia Supreme Court and holding that "departure from doctrine" investigations and decisions by the courts violated the First Amendment, and that church property disputes must be determined by "neutral principles of law developed for use in *all* property disputes." 393 U.S. 440, 447. (Italics supplied.)

On February 28, 1969, final arguments were presented to the trial court, turning largely on the federal constitutional effect of *Hull*, *supra*, 393 U.S. 440.

The trial court issued its memorandum opinion (Appendix A) on March 12, 1969, stating there was abundant proof of substantial changes in doctrine of the United

Presbyterian Church, and that it departed from its historic centuries-old presbyterian position. However, the trial court ruled that the plaintiffs were entitled to the relief they sought, believing that this result was in accord with United States Supreme Court decisions.

Findings of Fact, Conclusions of Law (Appendix D) and Judgment (Appendix E) were signed by the trial court on May 9, 1969, granting the church property to respondents and removing Dr. Rohrbaugh as pastor.

The Findings of Fact go into great detail on the religious procedures followed by Presbytery under church law to acquire possession and to remove the pastor. The trial court found, over the denial in petitioner's answer, that the national church was a hierarchical church with control over the property of all churches in the denominations. (See Appendix D.)

Keenly aware of the importance of the case and of the chaos that would result if immediate transfer were made and thereafter this judgment was reversed, the trial court suspended and stayed the judgment during the pendency of the appeal upon the defendants' filing a bond as security for plaintiffs' rights, which bond was duly filed.

On appeal to the Supreme Court of the State of Washington, the federal constitutional issue in accordance with court rule was stated as follows:

> "Can civil courts in the United States enforce ecclesiastical decisions under the First and Fourteenth Amendments to the Federal Constitution, requiring separation of church and state?" (Appellants Brief, p. 17; Appendix F.)

In its opinion (Appendix B) the Supreme Court of the

State of Washington directly ruled on the federal question and expressly followed *Watson v. Jones*, 13 Wall (80 U.S.) 679 (1871), and construed it to hold that civil courts can enforce ecclesiastical practices and decisions of what it determined on the finding of fact in the record (made in the face of petitioners denial in their answer) to be an "hierarchical church structure"; that *Hull*, 393 U.S. 440, had approved *Watson v. Jones* in this respect in its entirety (Appendix B; that it would not follow the second Georgia decision made after remand by this court, *viz.*, 225 Ga. 259, 167 S.E.2d 685 (1969), awarding title to the local churches where the legal title resided (certiorari denied by this court, 396 U.S. 1041 (1970)); and that even if one looked at the title question, the record title is in the Laurelhurst Church corporation, "which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a session which must act in accord with that discipline."

On this basis the Supreme Court of the State of Washington affirmed the judgment below, to review which this writ of certiorari is sought.

ARGUMENT

I.

The Court Below Unconstitutionally Enforced An Ecclesiastical Decision Based on Procedural Steps Taken Under A Religious Book of Order.

The Supreme Court of the State of Washington erred in construing *Watson v. Jones*, 13 Wall 679 (1871), to require it, in church property disputes, to enforce the ecclesiastical decisions of a church tribunal determined by it on disputed findings to be an "hierarchical structure,"

made under an elaborate theological Book of Order (Exhibit 1)—a strictly religious document by self-description based exclusively on the Scriptures (See Appendix F)—and claiming that this judicial action was supported by the recent decision of this court (*Hull*, 393 U.S. 440)—a patent misconstruction.

The Book of Order (Exhibit 1) is a strictly religious document. See excerpts set forth in Appendix F.

Hull stands for the position that courts cannot in the light of the First Amendment decide "departure from doctrine questions, but must rest church property decisions on "neutral principles of law, developed for use in all property disputes." (*Hull*, 393 U.S. 440, 449)

Hull did *not* involve the question of acceptance of the ecclesiastical decisions of a church judicatory. *Hull* merely approved *Watson* in the narrow aspect that courts must not decide questions of religious doctrine. *Hull* nowhere said that courts must accept the decisions of an ecclesiastical tribunal in church property disputes.

II.

The Court Below Did Not Follow "Neutral Principles of Law Developed for Use in All Property Disputes."

Decisions of an ecclesiastical tribunal made according to religious laws and procedures are obviously not "neutral principles of law developed for use in *all* property disputes." *Hull*, 393 U.S. 449, 449. (Italics supplied.) "Neutral principles of law developed for use in all property disputes," quite plainly means such things as principles relating to title, applicable statutes, etc., all strictly *secular* rules of law relating to property disputes.

74 *Yale Law Journal* 1113, 1137 (1963), rightly says:

> "The most objectionable rule from an 'absolute wall' point of view is strict adherence to *Watson v. Jones*. This rule gives the church plenary power over church property and allows the church to use the courts to enforce its decrees."

This statement is peculiarly applicable here.

For almost two centuries courts of equity in England and the United States (prior to *Hull*, 393 U.S. 440 (1969) in church property disputes have sustained the position of those who adhered to doctrine as being in the right, and those who departed from doctrine as being in the wrong, regardless of majority or minority. This was first authoritatively decided by the House of Lords in *Craigdallie v. Aikman*, 2 Bligh 529 (1820).

In our case victory has been given by the Supreme Court of the State of Washington to the party in the wrong under traditional equitable principles and denied victory to those in the right under those equitable principles.

Blind adherence to *Watson* gives the national church plenary power even if it has substantively changed doctrine and forces all churches to accept the new Confession of 1967 or leave.

The same *Yale Law Journal* article on the same page says:

> "The 'formal title' rule is perhaps the least objectionable from this point of view, since the state need not deal with either the theology or the administrative rules of the church, but looks solely to the locus of the title."

In our case the Supreme Court of the State of Washington made a literal application of *Watson v. Jones*, thus

applying "the most objectionable rule", and ignoring completely the sharp limitations put on *Watson v. Jones* by this court in *Hull, supra*, 393 U.S. 440, 396 U.S. 1041, and in *Church of God, supra*, 393 U.S. 528, 396 U.S. 367.

The formal title rule is supported not only by the *Yale Law Journal* writer, but by the Supreme Court of Georgia in its second decision (certiorari denied 396 U.S. 1041) and still more recently in *Merryman v. Price*, ... Ind. ....., 259 N.E.2d 883 (June, 1970) (also quoted in the Reply Brief to the Supreme Court of the State of Washington, p. 4). The Indiana court upheld an award to the local church over the claim of the general church. It rejected the application of *Watson v. Jones*. It then stated (p. 893):

> "The above cases together with the *Mary Elizabeth Hull* case strongly indicated a preference for what has been described 'formal title' approach to church property controversies. See Comment, 54 Iowa L. Rev. 899, 907, (1969). Under this approach the title holder of property has the right to determine the use of the property with neither theology nor administrative church law relevant."

III.

The Court Below Determined That the National Presbyterian Church Is a "Hierarchical Structure" And So Unconstitutionally Made A Doctrinal Decision.

The Supreme Court of the State of Washington violated the First Amendment in first determining from the theological evidence in the record (the Book of Order, Exhibit 1; see Appendix F), disputed in Petitioner's Answer, that the national Presbyterian Church here involved is an "hierarchical structure," which in and of itself required the court to examine and construe religious doctrine and make a doctrinal decision.

The court was warned by petitioners not to make this constitutional error by the filing before argument, as an additional authority to be considered, this statement from the article by Professor Robert C. Casad, in XXVII *Washington and Lee Law Review* 44-69 (1970), carefully analyzing the meaning and narrow scope of *Hull*, 393 U.S. 440 (1969), where he said (p. 68):

> "Justice Brennan's comment apparently excludes the *Watson* approach in such cases, for to classify a church as congregational or hierarchical inevitably involves an inquiry into religious law, usage, doctrine or polity."

Professor Casad further points out in his article (p. 68) that where Mr. Justice Brennan said in *Hull*, 393 U.S. 440, 447, that the "court converted the principle of Watson . . . into a constitutional rule" he was referring "only to the philosophical principle underlying the *Watson* decision: the principle that civil courts should not undertake to decide religious questions."

In determining, against denial in Petitioners' answer, that the national church here involved is an "hierarchical structure" the court violated the First Amendment by making a doctrinal decision.

IV.

The Court Below Erred in Holding That *Hull* Follows *Watson v. Jones*.

The Supreme Court of the State of Washington erred in deciding that *Hull*, *supra*, 393 U.S. 440, follows *Watson v. Jones* in holding that civil courts can enforce ecclesiastical decrees. (Appendix B) No such question was involved in *Hull*, which involved only whether civil courts could decide questions of religious doctrine.

V.

The Court Below Unconstitutionally Involved Title in Church Law and Discipline.

The Supreme Court of the State of Washington violated the First Amendment in holding that (Appendix B)

> "The record title is in the First United Presbyterian Church of Seattle, which by its bylaws is subject to the discipline of the United Presbyterian Church and is governed by a session which must act in accord with that discipline."

By this reasoning through the medium of internal church law and practices the court undertakes to divest the petitioner Laurelhurst Church corporation, governed by its statutory trustees, of its property.

Hull, supra, 393 U.S. 440, 449, specifically prohibits "resolution by civil courts of controversies over religious doctrine and *practice*." (Italics supplied.) The Washington court has unconstitutionally invaded the area of church law and *practice*.

VI.

The Decision of the Court Below Denies Petitioners Their Freedom of Religion.

The decision of the Supreme Court of the State of Washington unconstitutionally denies petitioners their freedom to religion to adhere to the historic Westminster Confessional documents and to enjoy their church property in so doing.

In *Maryland & Virginia Eldership v. Church of God*, 396 U.S. 367 (1970), this court, for want of a substantial federal question, dismissed an appeal from 254 Md. 162, 254 A.2d 162 (1969).

In that case, in upholding the right of local congregations to withdraw from the Eldership, the Supreme Court of Maryland said (254 A.2d 162, 170):

> "We do not understand that the decision in *Hull* requires the State equity courts to provide effective discipline and control of a denomination over its clergy or to maintain that denomination's 'purity of doctrine.' As we see it, this would be 'establishment of religion' with a vengeance, and under neither the Maryland law nor under the prohibitions of the First Amendment are we permitted to do this. We have no right to prevent the local congregations from separating from the Eldership and from refusing to accept the ministers appointed by the Eldership. To do this would deny to the members of the local congregation *their* freedom of religion and would in effect put the judicial power of the State behind the enforcement of the doctrine and discipline of the Eldership thus, in effect, 'establishing' the religion promulgated by the Eldership. This we are forbidden to do." (Emphasis in original)

So here the decision of the Supreme Court of the State of Washington unconstitutionally interferes with petitioners' freedom of religion in that it puts the "judicial power of the state behind the enforcement of the doctrine and discipline" of the respondent National Presbyterian Church. Here the Supreme Court of the State of Washington enforces the new Confession of 1967 and judicially "establishes" it.

NATIONAL IMPORTANCE OF THE CASE

The state court has decided a federal question "in a way probably not in accord with applicable decisions of this court" (Rule 19) in a case of great national importance.

There are many thousands of Presbyterian churches, and probably others, affected by *Watson v. Jones*, 13 Wall

679 (1971), and its interpretation in *Hull*, 393 U.S. 440, 396 U.S. 1041, and *Church of God*, 393 US.. 528, 396 U.S. 367, dismissing appeal.

By enforcing the ecclesiastical decree of the national church and judicially establishing the new Confession of 1967, the state court here has set a precedent which, unless reviewed and corrected here, will plague many thousands of churches nation-wide for years to come.

The new "Confession of 1967" is to Petitioners a secular religion, antithetical to historic Christianity as set forth in the Westminster standards. With the trend to a secular religion so strong in America today, now established by the decision of the Washington Supreme Court, congregations by the tens of thousands are unconstitutionally locked into this trend despite their desire to continue in the historic Christian faith as set forth in the Apostles Creed, in the Nicene Creed and the great confessions of the Reformation.

A review and reversal here will restore religious freedom to millions.

We respectfully pray that the Writ of Certiorari issue.

Respectfully submitted,

SCHWEPPE, DOOLITTLE, KRUG & TAUSEND
ALFRED J. SCHWEPPE
PETER E. PAGET
Attorneys for Petitioners

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

THE PRESBYTERY OF SEATTLE, INC., a non profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Plaintiffs,

vs.

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other Trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. McMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated, as set forth in the Complaint,

Defendants.

No. 691249

Memorandum Opinion

MR. DOUGLAS P. BEIGHLE of HOLMAN, PERKINS, COIE, STONE & OLSEN, and
MR. ROBERT A. YOTHERS,
Attorneys for Plaintiffs;

MR. ALFRED J. SCHWEPPE of SCHWEPPE, DOOLITTLE, KRUG & TAUSEND,
Attorney for Defendants.

This is a petition by the Presbytery of Seattle and

William H. Goleeke, a member of the Laurelhurst United Presbyterian Church, against Dr. James R. Rohrbaugh, pastor of said Laurelhurst church, the Board of Trustees and Elders of the church, and the individuals who comprise the Session of the church, requesting the court to enjoin defendant Dr. Rohrbaugh from acting as pastor of the Laurelhurst church or in any way interfering with the administrative commission appointed by plaintiff Presbytery functioning as the Session of the Laurelhurst church. Plaintiffs have also asked that the Elders and Trustees of the Laurelhurst church be restrained from in any way transferring or disposing of the property of said church, from interfering with the administrative commission appointed by the Presbytery functioning as the Session of the church, and for such other equitable relief as to the court may seem just and proper.

The General Assembly of the United Presbyterian Church of the United States, the supreme governing body of the church, met at Portland, Oregon for its annual meeting in 1967. At this meeting it is claimed by defendants, proof of which is abundant, that substantial changes were made in the doctrine of the church, that the confession of 1967 departed from its historic, centuries-old Presbyterian position and Statements of Faith and that political and social pronouncements were made to all of which loyal, conservative members of the church, and more particularly, the pastor and members of the Laurelhurst church, could not in good conscience abide.

Following the adoption by the General Assembly of the confession of 1967, the members of the congregation of the Laurelhurst church met to discuss the action of the General Assembly and overwhelmingly voted to withdraw from the mother church. (The congregation is estimated

to number about 600—roughly 200 attended the meeting and the vote was 183 to 11 to withdraw.)

Dr. Rohrbaugh and the members of his church made it known that it was their intention not to obey the constitution of the Presbyterian Church and that Seattle Presbytery had no jurisdiction over him as pastor or over his congregation or the property of the church.

Pursuant to the Book of Order and Book of Discipline, plaintiff Seattle Presbytery cited Dr. Rohrbaugh to appear on a day certain before a meeting of the Presbytery to show cause why he should not be removed as pastor of the Laurelhurst church; upon Dr. Rohrbaugh's refusal to appear before Presbytery he was removed as pastor, and the pulpit of the Laurelhurst church was declared vacant. No appeal has been taken by either Dr. Rohrbaugh or the Laurelhurst church through the next higher judicatory, the Synod of Washington-Alaska, as provided in the Book of Discipline and the Book of Order. In the Presbyterian Church the structure of tribunals is: (1) The Church Session, composed of Elders of the local church; (2) the Presbytery, composed of several churches in a certain geographical area (Seattle Presbytery comprises sixty-four churches); (3) the Synod (Washington-Alaska Synod) and (4) the General Assembly, the supreme governing body of the church.

All the Ruling Elders of the Laurelhurst church, with one exception, stated by letter to plaintiff Presbytery that Presbytery has no authority over them (a Session is composed of the Ruling Elders elected by the congregation) and recognized no validity to any action taken by plaintiff Presbytery concerning Pastor Rohrbaugh or the congregation.

Thereafter, pursuant to the Book of Order, the plaintiff Presbytery elected an administrative commission which was granted the full powers of Session, said commission to take the place of the then existing Session. No appeal was taken against this action of removal to the next higher judicatory, the Synod of Washington-Alaska.

Defendant Laurelhurst church was dedicated as the First United Presbyterian Church in January 1893 under the Oregon Presbytery. It was organized as a mission church, becoming self-supporting in 1903. The first church was located at Sixth Avenue and Seneca Street, the congregation moving to another church building at Fourteenth Avenue and East Spring Street in 1908, and finally to its present location in the Laurelhurst section of Seattle, and the name was changed to Laurelhurst United Presbyterian Church.

Article III of the Articles of Incorporation of the Laurelhurst Church recites:

> "The object and purpose of this corporation is to maintain religious services and stated meetings for worship of Almighty God and to cause to be preached and propagated in said city of Seattle and elsewhere the Gospel of Jesus Christ and the teachings of the Holy Spirit and particularly the belief and the practice adhered to by the denomination known as the United Presbyterian Church of North America; and to acquire, by gift, purchase or otherwise hold, manage, mortgage, lease, sell, convey and dispose of property of every kind and description both real and personal of said Society and of this corporation for the sole end of carrying out and securing the foregoing objects and purposes."

Article IV of said Articles specifically sets forth that the Pastor, Elders and Trustees are to be selected in ac-

cordance with the constitution of the United Presbyterian Church of North America, said officers to have only the authority granted by the constitution.

In 1958 the United Presbyterian Church of North America and the Presbyterian Church in the United States of America merged to form the United Presbyterian Church of the United States. All parties concerned herein have accepted said United Presbyterian Church of the United States as the lawful successor of both merged churches.

The testimony in this case was heard a year ago, and it was agreed that final arguments and a decision on the merits would be withheld until such time as the Supreme Court of the United States decided the case of *Presbyterian Church in the United States vs. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, then on appeal from the State of Georgia, 224 Ga 61, 159 SE2d 690.

We were hopeful also that through the assistance of two prominent members of the Seattle bar, Messrs. William F. Devin and Arthur E. Simon, both devout Presbyterians, we might be able to effect a reconciliation of the parties. To them for acting as friends of the court, I am deeply grateful. Their untiring efforts and devotion to Christian duty may not have been in vain.

Now that the Supreme Court has rendered its decision in the Georgia case, it is apparent that the court has reaffirmed the principles of law laid down in that early case of *Watson v. Jones*, 80 U.S. 679, 20 L.Ed. 666 (1871), in which case the court held in favor of the faction that remained loyal to the United Presbyterian Church in the United States. These principles in *Watson* have been cited with approval in several subsequent United States Supreme

Court cases, namely, *Gonzales vs. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 74 L.Ed. 131 (1929), which was to the effect that in the absence of fraud, collusion or arbitrariness the decision of proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive because the parties in interest made them so by contract or otherwise.

In the recent Georgia case I quote from Mr. Justice Brennan's opinion (pp. 663-664):

> "It is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution. Special problems arise, however, when these disputes implicate controversies over church doctrine and practice. The approach of this Court in such cases was originally developed in *Watson v. Jones*, 13 Wall 679, 20 L.Ed 666 (1872), a pre-Erie v. Thompkins diversity decision decided before the application of the First Amendment to the States but nonetheless informed by First Amendment considerations. There, as here, civil courts were asked to resolve a property dispute between a national Presbyterian organization and local churches of that organization. There, as here, the dispute arose out of a controversy over church doctrine. There, as here, the Court was asked to decree the termination of an implied trust because of departures from doctrine by the national organization. The Watson Court refused, pointing out that it was wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions. In language which has a clear constitutional ring, the Court said
>
> > 'In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is con-

> ceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect . . . All who unite themselves to such a body [the general church] do so with an implied consent to [its] government, and are bound to submit to it. But it would be a vain consent, and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them [sic] reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.' 13 Wall, at 728-729, 20 L.Ed at 676-677.

"The logic of this language leaves the civil courts *no* role in determining ecclesiastical questions in the process of resolving property disputes."

Other cases cited with approval by the Supreme Court in the recent Georgia case are *Trustees of Pencador Presbyterian Church vs. Gibson*, 22 A.2d 782, (Del. 1941); *St. John's Presbytery vs. Central Presbyterian Church of St. Petersburg*, 102 So.2d 714 (Fla. 1958); *Bramlett vs. Young*, 93 SE2d 883 (S.C. 519) (Footnote 5); and *Kedroff vs. St. Nicholas Cathedral*, 344 U.S. 94, 97 L.Ed. 120 (1952).

In the Georgia case the United States Supreme Court concluded (p. 666):

> "Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of the particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role."

In the above-cited *St. John's Presbytery* case, that court states:

> "This is an abounding array of authorities but they all treat some phase of litigation growing out of church schisms in which both factions lay claim to the church property. When the church is representative, republican or episcopal in government, the authorities uniformly hold that the church property whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. It matters not whether those who withdraw from the mother church constitute a majority or a minority faction, the church property remains with the mother church. There are exceptions to this rule when the schism occurs in a church whose government is congregational in form like the Baptist or Congregational denominations but in churches bound together by associated ecclesiastical government when the local church is obedient to a larger or more important religious organization and is governed by it, such as the Presbyterian, Catholic, Episcopal, Methodist and Lutheran. I have found no exception to this rule. They could not function under any other rule." 102 So.2d at 718.

I quote from *Bramlett* above cited, page 883, which seems to me to be the answer to the position taken by defendants Dr. Rohrbaugh and his congregation in the instant case:

> "The appellants cannot now comprise McCarter Presbyterian Church because they have seceded and disassociated themselves by their voluntary action and vote, from any connection with Enoree Presbytery and the Presbyterian Church in the United States. They are now engaged in worship as an independent church. The appellants assert that even though they are no longer affiliated with the Presbyterian Church in the United States, yet they contend that they maintain and observe the doctrine and tenets of the church, and assert also that they are still a Presbyterian Church. There can be no Presbyterian Church in the

> United States without an affiliation with a Presbytery. A Presbyterian Church can be organized only by authority of a Presbytery. A minister cannot be employed or called to serve a Presbyterian Church without the approval of the Presbytery, of which such church is a member." 93 S.E.2d at 883.

To the same effect are decisions of our own Supreme Court. In the case of *Wilkeson vs. St. Luke's Parish*, 176 Wash. 377 (1934) the court stated (p. 384-5):

> "In the absence of fraud, where the right of property in a civil court is dependent on the question of doctrine, discipline, ecclesiastical law, rule or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive, and be governed by it in its application to the case before it."

In *Hoffman vs. Tacton View Methodist Church*, 33 Wn.2d 716 (1949), p. 728, our court cited *Wilkeson* with approval and stated:

> "It is our opinion that the Methodist Church falls within the third group listed in *Watson v. Jones, supra*. Its organization is Presbyterian in form and not Congregational. As a result, it is our opinion that local churches are only parts of the larger body, and no local Methodist church may convert its property to a use not authorized by the superior church government."

In *Hoffman* the court cited with approval the case of *Presbytery of Bismarck vs. Allen*, 22 N.W.2d 625 (N.D. 1946), which held that individual members of a congregation have no property rights in the church property.

Reluctantly, for my sympathies are with Pastor Rohrbaugh and his congregation, I must conclude that plaintiffs are entitled to the relief sought, and it is so ordered. The status quo will be maintained until appropriate orders are

signed. In the event of appeal I will consider upon timely notice of such a request for a stay until the supreme court has assumed jurisdiction—this because of the serious outcome of the appropriate order I shall feel obliged to sign.

DATED this 12th day of March, 1969.

s/ WILLIAM J. WILKINS,
Judge

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE PRESBYTERY OF SEATTLE, INC., a non profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Respondents,

v.

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other Trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,

Appellants.

No. 41167
En Banc

Filed June 3, 1971

The United Presbyterian Church is an association of local Presbyterian churches governed by a hierarchy which includes, in ascending order, the Session (composed of the pastor and the elders of the local church), the Presbytery (composed of all the pastors and at least one elder from each of the churches within a defined district), the Synod (composed of representative pastors and elders from

the Presbyteries within a geographical region), and the General Assembly (composed of delegations of pastors and elders from all the Presbyteries). These governing bodies are called "judicatories."

The Laurelhurst United Presbyterian Church of Seattle had on its rolls approximately 600 members. The pastor and 183 members, including the trustees and all but one of the elders (the appellants herein), feeling aggrieved by certain doctrinal changes which were adopted in 1967 by the United Presbyterian Church as a part of its constitution, voted to withdraw as a body.

They requested that the Presbytery of Seattle strike the name of the church from its rolls and authorize them to use the church property for their own purposes. Their requests were refused and the Presbytery further advised that there was no authority in the constitution for the members of a church to withdraw as a body. The appellant Rohrbaugh was removed as minister and the Session was dissolved by the Presbytery, which appointed an administrative commission having the powers of Session to administer the affairs of the church for those members who had not withdrawn.

Although the constitution of the church provides for appeals to the judicatories of the Washington-Alaska Synod and the General Assembly of the church, no appeal was taken.

Instead, the appellants, who had apparently comprised most of the active membership of the church, refused to allow the administrative commission to enter the church or to operate with the powers of Session, and the appellant Rohrbaugh continued to act as pastor of the church.

This action was instituted by the Presbytery to obtain an adjudication of its right to control the use and disposition of the church property. That relief was granted by the trial court, which issued an order restraining and enjoining the appellants from interfering with the respondent Presbytery's use and control of the property of the church or diverting that property, and which ordered an accounting by the appellants of all the funds and properties of the church and delivery by them of all the property of the church, including its books and records and the deed to the church property.

The appellants first suggest that the respondents have no standing to bring this action, citing as authority for this proposition provisions in the church constitution which disclaim for the judicatories any civil jurisdiction. Nowhere in these provisions do the judicatories disclaim their right to petition the courts for relief in civil controversies. The provisions simply acknowledge what is a fact without that acknowledgment—the jurisdiction of church judicatories is ecclesiastical and not civil.

Furthermore, as the respondents point out, one of them is a member of the Laurelhurst United Presbyterian Church, representing in a class action all other members who did not withdraw from membership, and their interest in preserving the church property is not questioned. We disagree with the appellants' contention that the respondents do not have standing to bring this action.

Turning to the merits, we find that the appellants rest their appeal upon a contention that they are the "record titleholders" of the property and that no further inquiry need be made by the courts to determine the question of

who is entitled to use and control the property. It should be noted at this point that the record title is in the church. The appellants evidently conceive that they comprise the church; and for their claim to a proprietary interest they rely heavily upon a recent Georgia case, *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969).

The opinion in that case appears to be the final disposition of a case which arose in Georgia upon facts very similar to those involved in this case. The Georgia trial court submitted the case to the jury with instructions to determine whether the constitutional changes made by the entire church in 1967 constituted a "substantial departure" from the doctrine espoused by that church when the local church was formed. The jury found that indeed such a departure had occurred, and the trial court ruled, applying Georgia law, that the local church did not hold title to the property upon an implied trust for the nationwide church.

This decision was affirmed by the Supreme Court of Georgia. The Presbyterian Church in the United States petitioned the United States Supreme Court for certiorari, contending that the courts of Georgia had violated the "establishment clause" of the first amendment to the United States Constitution. Certiorari was granted and the Supreme Court reversed, holding that

> the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 21 L.Ed.2d 658, 89 S. Ct. 601 (1969).

However, the United States Supreme Court did not hold that civil courts have no power to determine controversies concerning church property. It expressly approved the holding of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), wherein the court refused to decree the termination of an implied trust because of departures from doctrine by the national organization. The court in *Watson v. Jones, supra*, held that members who withdrew from a Presbyterian church, even though they included members of the Session and the trustees, forfeited any right to use the church property.

The church involved in that action was Presbyterian, having precisely the same hierarchical structure as that involved in this action. There legal title was vested in the trustees of the local church; here it is vested in a corporation having trustees, but in both cases, under the church constitution, the right to control the use of the property is vested not in the trustees but in the Session, the Session in turn being subject to control by the Presbytery, the Presbytery by the Synod and the Synod by the General Assembly. The United States Supreme Court took notice of all these matters of church structure, obviously not regarding them as ecclesiastical or doctrinal in nature, but rather matters of agreement among the members concerning their self-government, which it was necessary to examine in order to determine the right to control the property.

The doctrinal dispute in that case arose between certain members of the local church and others who favored the

position of the national hierarchy upon the question of slavery, the national having taken a doctrinal position against the institution of slavery which was offensive to one faction of the local church. The factionalism spread to the Presbytery and to the Synod of Kentucky. The parties turned to the courts for resolution of their disagreement about the right to control and use the church property.

The United States Supreme Court in the *Hull* church case quoted the following significant language from *Watson v. Jones, supra,* describing it as language having a "clear constitutional ring":

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. . . . All who unite themselves to such a body [the general church] do so with an implied consent to [its] government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them *[sic]* reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." 13 Wall., at 728-729.

(Footnote omitted.) 393 U.S. at 446.

It would appear certain that the United States Supreme Court approved the rule laid down in *Watson v. Jones, supra,* that the decision of the highest tribunal of a hier-

archical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to use church property. Nevertheless, upon remand the Georgia court refused to apply that rule. It also refused to apply the implied trust doctrine approved by the United States Supreme Court in *Watson v. Jones, supra,* and instead construed the opinion in the *Hull* church case to mean that the trust theory, as well as the theory of a "condition of the trust" must be abandoned.

We do not find such a holding in the opinion of the United States Supreme Court in the *Hull* case. Nor are we impressed with the rationale employed by the Georgia court in reaching its decision. That court said that the right to use the property rested in the holder of the record title. If we assume that the holder was a corporation, as in this case, and that the members of the corporation were members of the congregation of the named Presbyterian church, we are faced with the conclusion that, under the constitution of the church, only the loyal members of the church could be regarded as members of the congregation.

If the court meant to hold, as the appellants would have us assume, that the property belonged to those former members who had withdrawn from the church, it would seem that the decision falls short of its purpose. There is in it no explanation of the legal route by which title passed from the corporation to the dissidents.

Finally, if the court meant to hold that title was in the trustees, it failed to recognize or resolve the question: what was the nature of their trust? It would appear inescapable that the trust was defined by the provisions of

the church constitution, wherein their offices and duties were created.

The United States Supreme Court denied a petition for certiorari to review this decision of the Georgia court. Such a refusal, of course, does not denote approval of the decision of the state court.

Be that as it may, we are of the opinion that there is no necessity to look to the courts of Georgia for guidance in the disposition of this case. This court has adopted the rule of *Watson v. Jones, supra*, in cases of this kind, having held in *Hervian v. Plummer*, 20 Wash. 363, 55 P. 315 (1898) and *Hoffman v. Fiction View Community Methodist Episcopal Church*, 33 Wn.2d 716, 207 P.2d 699 (1949), that, in the absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive. The propriety of this rule was again recognized in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra*. We see no reason to abandon it.

The appellants are not, as they contend, the record titleholders of the property. The record title is in The First United Presbyterian Church of Seattle,[1] a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a Session which must act in accord with that discipline. The appellants have withdrawn from that church, but according to

1. The former name of the Laurelhurst United Presbyterian Church

the decision of the Presbytery of Seattle, from which no appeal was taken, they had no right to withdraw from the church as a body and take with them the name of the church and its property. The pastor, the trustees, and the members of the Session who withdrew forfeited their right to govern the affairs of the church when they did so, according to the decision of the highest tribunal to which an appeal was taken, and consequently the appellants have no right to control the use of the property.[2]

The decree is affirmed.

s/ ROSELLINI, J.

We concur:

HAMILTON, C. J.
FINLEY, J.
HALE, J.
NEILL, J.
STAFFORD, J.
WRIGHT, J.
DONWORTH, J. Pro Tem

2. *See also Apostolic Faith Mission of Portland, Ore., v. Christian Evangelical Church*, 55 Wn 2d 304, 347 P.2d 1059 (1960), holding that members of a church forfeit any interest they may have in the beneficial use of property when they withdraw from membership.

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE PRESBYTERY OF SEATTLE, INC., a non-profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Respondents,

vs.

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non-profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,

Appellants.

Remittitur
No. 41167
King County
No. 691249

The State of Washington to:

The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Supreme Court of the State of Washington filed on June 3, 1971, became

the final judgment of this court in the above entitled case on July 23, 1971. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Six hundred forty-five and 72/100 dollars ($645.72) in favor of respondents and against appellants and against appellant's surety, The General Insurance Company of America, not to exceed the amount of the surety's bond.

The petition for rehearing was denied by order dated July 23, 1971.

cc; Schweppe, Doolittle, Krug & Tausend
Mr. Peter E. Paget

Perkins, Coie, Stone, Olsen & Williams
Mr. Douglas P. Beighle

Mr. Malcolm McLeod
Court Reporter

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 23rd day of July, A.D. 1971.

WILLIAM M. LOWRY
Clerk of the Supreme Court,
State of Washington.

APPENDIX D

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

THE PRESBYTERY OF SEATTLE, INC., a non-profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Plaintiffs,

vs.

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non-profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other Trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL R. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all other similarly situated, as set forth in the Complaint,

Defendants.

No. 691249

Findings of Fact and Conclusions of Law

The above-entitled matter having come on for trial before the Honorable William J. Wilkins, Judge of the above-entitled Court, on January 31, 1968, plaintiffs appearing

personally and by their attorneys of record, defendants appearing personally and by their attorneys of record, the Court having heard the testimony of witnesses and considered the exhibits and the argument of counsel, now makes the following

FINDINGS OF FACT

I.

That plaintiff The Presbytery of Seattle, Inc. is a non-profit Washington corporation, with its principal situs in King County, State of Washington. That it is a corporation authorized by and formed under the constitution of the United Presbyterian Church in the United States of America. That the plaintiff Presbytery of Seattle is authorized to represent the United Presbyterian Church in the United States of America in all temporal and civil matters and is the ecclesiastical judicatory body having the authority over the defendants herein named. That the plaintiff William H. Goleeke is a member of the Laurelhurst United Presbyterian Church and of the United Presbyterian Church in the United States of America and was representative of a group of other members of the said Laurelhurst United Presbyterian Church and the United Presbyterian Church in the United States of America.

II.

That the plaintiff Presbytery is the superior judicatory and assembly and has jurisdiction over 64 particular churches in the Seattle area. That the defendant Laurelhurst United Presbyterian Church is one of the churches in and under the jurisdiction of plaintiff Presbytery.

III.

That the United Presbyterian Church in the United States of America is a religious organization which provides that its lay members and clerical members are organized within the Presbyterian Church into particular churches. That the structural tribunals are:

1. The church "session", composed of elders of the local church, over which the pastor presides as moderator.

2. The next higher tribunal is the "Presbytery", composed of several churches in a certain geographical area. The Presbytery of Seattle is composed of all the ministers and the elder representatives from all of the 64 particular churches within the boundary of Presbytery of Seattle.

3. Presbyteries are in turn organized within the church into 33 groups known as "Synods"; the Synod in this case being the Washington-Alaska Synod.

4. All the particular churches and judicatories are in turn organized and are subject to the jurisdiction of the supreme assembly or judicatory of the Presbyterian Church known as the "General Assembly", which is the supreme governing body of the church.

IV.

That the Presbyterian Church is a religious society organized and existing pursuant to the laws, rules and regulations adopted by and applicable to such church.

That the general rules, regulations and system of government of the Presbyterian Church are set forth in that portion of the constitution of the Presbyterian Church designated as "The Book of Order", published by the office of the General Assembly of the United Presbyterian Church in the United States of America, in 1967.

That under said constitution, rules and ecclesiastical law, the church government is the Presbyterian form of government, with the various components thereof constituting one united sovereign church and the units being integral parts of the sovereign church and not independent or congregational.

V.

Defendant Laurelhurst Church was dedicated as the First United Presbyterian Church in January, 1893, under the Oregon Presbytery. It was organized as a mission church, becoming self-supporting in 1903. The first church was located at Sixth Avenue and Seneca Street, the congregation moving to another church building at Fourteenth Avenue and East Spring Street in 1908, and finally to its present location in the Laurelhurst section of Seattle, and the name was changed to Laurelhurst United Presbyterian Church.

Article III of the Articles of Incorporation of the Laurelhurst Church recites:

> "The object and purpose of this corporation is to maintain religious services and stated meetings for worship of Almighty God and to cause to be preached and propagated in said city of Seattle and elsewhere the Gospel of Jesus Christ and the teachings of the Holy Spirit and particularly the belief and the practice adhered to by the denomination known as the United Presbyterian Church of North America; and to acquire by gift, purchase or otherwise hold, manage, mortgage, lease, sell, convey and dispose of property of every kind and description both real and personal of said Society and of this corporation for the sole end of carrying out and securing the foregoing objects and purposes."

Article IV of said Articles specifically sets forth that the pastor, elders and trustees are to be selected in accordance

with the constitution of the United Presbyterian Church of North America, said officers to have only the authority granted by the constitution.

In 1958, the United Presbyterian Church of North America and the Presbyterian Church in the United States of America merged to form the United Presbyterian Church in the United States of America. All parties concerned herein have accepted said United Presbyterian Church in the United States of America as the lawful successor of both merged churches.

VI.

That in 1967, the General Assembly of the United Presbyterian Church in the United States of America, the supreme governing body of the church, adopted what is known as the Confession of Faith of 1967. Following the adoption by the General Assembly of the Confession of Faith of 1967, certain members of the congregation of the Laurelhurst Church met to discuss the action of the General Assembly and certain political and social pronouncements to which the defendants and certain members of the Laurelhurst congregation objected.

VII.

That in August of 1967, the defendant pastor, Dr. James L. Rohrbaugh, and all the members of his session except one advised the plaintiff Presbytery that it was their intention not to obey the constitution of the United Presbyterian Church in the United States of America.

VIII.

Pursuant to the Book of Order, plaintiff Presbytery cited defendant Dr. James L. Rohrbaugh to appear on October

30, 1967, before a meeting of the Presbytery to show cause why he should not be removed as pastor of the Laurelhurst United Presbyterian Church, and further cited members of the session save one to appear and show cause why they should not be removed as members of the session of the said Laurelhurst Church. Both the defendant Dr. Rohrbaugh and the members of the session refused to appear before the Presbytery, and stated that the plaintiff Presbytery had no jurisdiction over them or the congregation or property of the church.

IX.

That pursuant to the Book of Order, the plaintiff Presbytery of Seattle did thereafter remove said defendant Dr. James Rohrbaugh as pastor of the Laurelhurst United Presbyterian Church, and the pulpit of the Laurelhurst Church was declared vacant. No appeal was taken by the defendants or either of them or the defendant Laurelhurst Church to the next higher judicatory, Synod of Washington-Alaska, as provided for in the Book of Order.

X.

That plaintiff Presbytery, pursuant to the Book of Order, elected an administrative commission, which was granted full powers of session, and did authorize said administrative commission to take the place of the then existing session of the Laurelhurst United Presbyterian Church. No appeal was taken from this action of removal or of the election of the administrative commission to the next higher judicatory, the Synod of Washington-Alaska.

XI.

That on or about October 5, 1967, at a duly called congregational meeting, a motion and resolution were passed

by the majority of those attending the meeting (the vote was 183 to 11) to withdraw as a congregation from the United Presbyterian Church in the United States of America, and to request that all the names of the members of the congregation be erased from the rolls of Presbytery.

XII.

That there is no provision under the constitution, Book of Order or Book of Discipline of the United Presbyterian Church in the United States of America for a congregation or church to withdraw from the denomination. There are provisions for persons to withdraw individually. That those members of the congregation who wish to withdraw may do so by submitting a request in writing to the administrative commission which was duly, properly and constitutionally elected by the Seattle Presbytery, and said administrative commission may grant such request.

XIII.

That the defendant Dr. James L. Rohrbaugh held his office of pastor, and all of his rights, privileges and duties as pastor and moderator of the session of said Laurelhurst Church were held subject to the Book of Order and Book of Discipline of the United Presbyterian Church in the United States of America and of the Presbytery of Seattle.

XIV.

That the real estate described as follows:

Lot 1 and the South ½ of Lot 11 and all of Lot 12, all in Block 1 of McLaughlin's Lawn Acres as per plat recorded in Volume 18 of Plats, Page 19, Records of King County, Washington,

and

Lot 15 in Block 4 of Laurelhurst as per plat recorded

in Volume 14 of Plats, Page 15, Records of King County, State of Washington;

together with certain personal property described as follows:

Books of Worship, Hymnals, Books, Records, Monies, Temporalities, Bank Accounts in the Stadium Branch of the National Bank of Commerce in King County;—

was acquired for the use and benefit of the Laurelhurst United Presbyterian Church in accordance with the constitution, rules, procedures, and laws of the United Presbyterian Church in the United States of America. That plaintiff Presbytery has a duty imposed upon it to preserve and protect the use of said real and personal property for the use and benefit of the United Presbyterian Church in the United States of America.

XV.

That only such person as may be designated and authorized by the Presbytery of Seattle may be permitted to preach or in any manner act as the pastor of the Laurelhurst United Presbyterian Church.

XVI.

That the defendant Dr. James L. Rohrbaugh has continued to act as pastor of said Laurelhurst United Presbyterian Church, continued to preach from the pulpit, and continued to moderate the meetings of the session, and all of said defendants have continued to use the real and personal property.

XVII.

That the defendants have refused to recognize the authority of the administrative commission elected by plaintiff Presbytery of Seattle, have refused to permit members

of the administrative commission to enter upon the facilities of the said Laurelhurst United Presbyterian Church, and have interfered with and obstructed the efforts of the administrative commission to exercise the power of session of the Laurelhurst United Presbyterian Church.

XVIII.

That the plaintiffs have no adequate remedy at law, and that the church properties are unique and especially adapted for the use and purposes of the church. That defendants will continue to interfere with the right of plaintiff Presbytery to provide religious worship for members of the congregation and other members who desire to remain loyal to the United Presbyterian Church in the United States of America and who recognize the jurisdiction of the plaintiff Presbytery and are willing and desirous of abiding by the constitution of the United Presbyterian Church in the United States of America and the action of the Seattle Presbytery pursuant thereto.

And, from the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

I.

That the Court has jurisdiction over the parties and the cause of action.

II.

That the defendants have acted contrary to the constitution, rules of order, procedures and laws of the United Presbyterian Church in the United States of America.

III.

That those members of the congregation of the Laurelhurst United Presbyterian Church acted contrary to the constitution, rules of order, procedures and laws of the United Presbyterian Church in the United States of America in requesting plaintiff Seattle Presbytery to erase the name of the Laurelhurst congregation and its pastor from the roll of the said Presbytery.

IV.

That the acts of the defendants in attempting to withdraw from the denomination and retain the property exclusive of the rights of plaintiff William Goleeke and the others who desire to remain members of the United Presbyterian Church in the United States of America, are in violation of the constitution, rules of order, procedures and laws of the United Presbyterian Church in the United States of America.

V.

That the plaintiff Presbytery of Seattle is the judicatory having jurisdiction over the said Laurelhurst United Presbyterian Church and the defendants herein. That the action taken by plaintiff Presbytery in removing the defendant Rohrbaugh as pastor and declaring the pulpit vacant on October 3, 1967, was proper and binding upon the defendant Rohrbaugh.

VI.

That the plaintiff Presbytery of Seattle is the judicatory having jurisdiction over the said Laurelhurst United Presbyterian Church and the defendants herein. That the action taken by plaintiff Presbytery in removing the defend-

ant trustees and members of the session of the Laurelhurst United Presbyterian Church was proper and binding upon the said defendants.

VII.

That the defendants or individual members of the congregation of the Laurelhurst United Presbyterian Church have no property rights in any of the church property, either real or personal. That all of said property is held in trust for and belongs to the United Presbyterian Church in the United States of America.

VIII.

That plaintiffs are entitled to the relief sought, together with plaintiffs' costs.

DONE IN OPEN COURT this 9 day of May, 1969.

/s/ WILLIAM J. WILKINS
Judge

Presented by:

/s/ ROBERT A. YOTHERS
Robert A. Yothers

/s/ DOUGLAS P. BEIGHLE
Douglas P. Beighle

Holman, Perkins, Coie, Stone & Olsen
Attorneys for Plaintiffs

APPENDIX E

Served April 23, 1969

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

THE PRESBYTERY OF SEATTLE, INC., a non-profit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church, and representing all others similarly situated,

Plaintiffs,

vs.

JAMES L. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington non-profit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other Trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL R. McMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated, as set forth in the Complaint,

Defendants.

No. 691249

DECREE

The above-entitled matter having come on for trial before the undersigned Judge on January 31, 1968, plaintiffs appearing personally and by their attorneys of record, defendants appearing personally and by their attorneys of record, the Court having heard the testimony of witnesses

and considered the exhibits and being fully advised in the premises, and having heretofore entered its Findings of Fact and Conclusions of Law and directed that judgment be entered in accordance therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that the defendants and each of them, and any and all persons represented in this action by said defendants, are hereby:

1. Restrained and enjoined from in any way interfering with the Administrative Commission representing the plaintiff Presbytery of Seattle, Inc. acting with the powers of Session of the Laurelhurst United Presbyterian Church;

2. Restrained and enjoined from in any way interfering with plaintiff Presbytery providing a pastor for the Laurelhurst United Presbyterian Church;

3. Restrained and enjoined from using the name "United Presbyterian Church" or the name "Laurelhurst United Presbyterian Church" or any similar name or combination thereof;

4. Restrained and enjoined from in any way interfering with or obstructing by any conduct of any of the defendants or of any person acting by, for, through, or on behalf of the defendants, with plaintiffs' right to conduct services and worship in said Laurelhurst United Presbyterian Church;

5. Restrained and enjoined from diverting any of the properties of the said Laurelhurst United Presbyterian Church, or from in any way selling, leasing, encumbering, or disposing of any of the real estate described as follows:

Lot 1 and the South ½ of Lot 11 and all of Lot 12, all in Block 1 of McLaughlin's Lawn Acres as per plat recorded in Volume 18 of Plats, Page 19, Records of King County, Washington,

and

Lot 15 in Block 4 of Laurelhurst as per plat re-

corded in Volume 14 of Plats, Page 15, Records of King County, State of Washington,

or of any of the personal property; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the defendant James L. Rohrbaugh is hereby restrained and enjoined from officiating as the Pastor of Laurelhurst United Presbyterian Church or of any church that is a member of Presbytery of Seattle, Inc.; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the defendants and each of them are hereby directed to deliver immediately to the plaintiff Presbytery of Seattle the possession and occupancy of said church and the manse located on the above-described real estate, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the defendants are directed to deliver into the care, custody and control of the plaintiff Presbytery of Seattle the following personal property and documents:

1. The books and documents of Laurelhurst United Presbyterian Church;
2. The roll of active Elders and their addresses;
3. The roll of communicant members and their addresses;
4. The deed to the church property and the manse;
5. The corporate charter;
6. The ecclesiastical and corporate by-laws, both old and new;
7. Minutes of all meetings of the Session, congregation and corporation;
8. Other church records in the possession of the defendant Pastor, or the defendant Prier and members of

the Board of Trustees, or the defendant Schreiner and members of the Session; and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that the defendants are directed to make a full and complete accounting of all funds and properties of the Laurelhurst United Presbyterian Church from October 1, 1967, to date; and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for 30 days for the purpose of entering judgment against the defendants, jointly and severally, in such amount as shall be determined by reason of said accounting, covering such sums as were expended or obligations incurred without permission of plaintiff Presbytery of Seattle or of the Administrative Commission elected by plaintiff Presbytery of Seattle; and it is hereby

FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs have judgment against the defendants and each of them, jointly and severally, for plaintiffs' costs incurred herein.

DONE IN OPEN COURT this 9 day of May, 1969.

/s/ WILLIAM J. WILKINS
Judge

Presented by:

/s/ ROBERT A. YOTHERS
Robert A. Yothers

/s/ DOUGLAS P. BEIGHLE
Douglas P. Beighle, of Holman, Perkins, Coie, Stone & Olsen
Attorneys for Plaintiffs

APPENDIX F

The Book of Order, Part II, The Constitution of the United Presbyterian Church in the United States of America (1967-68), Chapter V, paragraphs 35.02, 35.03 and 35.06 (Ex. 1) states in part:

> . . . And we hold it to be expedient, and agreeable to Scripture and the practice of the primitive Christians, that the Church be governed by sessions, presbyteries, synods, and general assemblies. In full consistency with this belief, we embrace, in the spirit of charity, those Christians who differ from us, in opinion or in practice, on these subjects.
>
> 3. These judicatories ought not to possess any civil jurisdiction, or to impose any civil penalties. Their power is wholly moral or spiritual, and that only ministerial and declarative. They possess the right of requiring obedience to the laws of Christ and of excluding the disobedient and disorderly from the privileges of the Church. To give efficiency, however, to this necessary and Scriptural authority, they possess the powers requisite for obtaining evidence and inflicting censure. They can call before them any offender against the order and government of the Church; they can require members of their own society to appear and give testimony in the cause; but the highest punishment to which their authority extends is to exclude the contumacious and impenitent from the congregation of believers.
>
> * * *
>
> 6. Ecclesiastical power, which is wholly spiritual, is twofold: the officers so chosen exercise it sometimes severally, in their personal ministries in the Church; and they exercise it sometimes jointly, in Church judicatories, which is the power of jurisdiction.

In addition, said Constitution, paragraphs 31.07 and 31.08 (Ex. 1), provides:

> That all church power, whether exercised by the body in general or in the way of representation by

delegated authority, is only ministerial and declarative; that is to say, that the Holy Scriptures are the only rule of faith and manners; that no church judicatory ought to pretend to make laws to bind the conscience in virtue of their own authority; ° ° °

Lastly, that, if the preceding Scriptural and rational principles be steadfastly adhered to, the vigor and strictness of its discipline will contribute to the glory and happiness of any Church. Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever but from its own justice, the approbation of an impartial public, and the countenance and blessing of the great Head of the Church Universal.

Under the rules quoted above from the Book of Order, Presbyteries and individuals have no "civil jurisdiction." "Their power is wholly moral and spiritual."

SUPR... MOTION FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-563

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, et al.,
Petitioners,

vs.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF AMICI CURIAE ON BEHALF OF MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, A GEORGIA NONPROFIT CORPORATION, AND EASTERN HEIGHTS PRESBYTERIAN CHURCH, A GEORGIA NONPROFIT CORPORATION

OWEN H. PAGE
Attorney for Mary Elizabeth Blue Hull Memorial Presbyterian Church, a Georgia nonprofit corporation, and Eastern Heights Presbyterian Church, a Georgia nonprofit corporation

305 Realty Building
Savannah, Georgia 31401

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

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IN THE

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JAMES P. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, et al.,
Petitioners,

vs.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

Mary Elizabeth Blue Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church, both

Georgia nonprofit corporations through their pastors and moderators, Rev. A. Dale Umbreit and Rev. Todd W. Allen, respectively, move for leave to file a brief *amici curiae* in support of the Petitioners in this cause.

At the October Term, 1968, the *amici curiae* were before this Court as Respondents in the case of *Presbyterian Church in the United States, et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, Case No. 71. On January 27, 1969, this Court enunciated the now celebrated "neutral principles" rule in the determination of church property disputes. This Court remanded the case to the Supreme Court of Georgia for disposition not inconsistent with the decision rendered. The Supreme Court of Georgia in applying the "neutral principles" promulgated in *Presbyterian Church in the United States et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.*, 393 U. S. 440, 21 L. Ed. 2d 658 (1969) found again that the local churches were entitled to possession of the properties in dispute. This Court denied certiorari on the second petition after remand, 396 U. S. 1041, 24 L. Ed. 2d 685 (1970).

It is the conviction of the *amici curiae* that the judgment of the Supreme Court of the State of Washington, which is sought to be reviewed in the petition for a writ of certiorari, violated the First and Fourteenth Amendments of the Constitution of the United States and the controlling decision of this Court as established in *Presbyterian Church in the United States et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church et al., supra*. The effect of the decision of the Washington Court was to ignore this Court's mandate in *Hull* and to embrace the forbidden ecclesiastical inquiry thought permissible under *Watson* v. *Jones*, 13 Wall. (80 U. S.) 679 (1871). Such conduct on the part of the Washington Court consti-

tutes a grave retreat which should be corrected by this Court. As the *amici curiae* read and understand the decision of the Washington Court, it rejected the proscription of *Hull* which condemned the application of any discipline, dogma, or doctrine of a denomination in the determination of church property conflicts. The rejection of the "neutral principles" of *Hull* by the Washington Court is an attempt to resurrect *Watson* v. *Jones, supra,* which was repudiated by *Hull.* As parties litigant in *Hull,* the *amici curiae* urge that this Court grant the writ sought by the Petitioners. The decision of the Washington Court is of national importance as it flouts the command of this Court in *Hull.* It can be used persuasively as precedent in pending and future litigation where a State court may still be oriented towards *Watson* v. *Jones, supra.* Further, the decision of the Washington Court is antithetical to decisions of the Supreme Courts of Ohio and Indiana which applied the "neutral principles" of *Hull* with fidelity.

This Court should grant the Petition so that the error of the Supreme Court of Washington can be purged. The potential chaos resulting from the misconstruction of *Hull* by the Washington Court must be manifest to this Court. The error of that Court should be corrected before it proliferates.

The Movants wish to file the attached brief in order to bring these matters to the attention of the Court, for the Movants believe that their consideration is vital to the presentation and consideration of the constitutional issues involved.

WHEREFORE, it is respectfully requested that this Motion for Leave to File a Brief *amici curiae* be granted and the expressions contained in the brief be considered.

by this Court in resolving the question presented by the Petitioners for the writ of certiorari.

Respectfully submitted,

OWEN H. PAGE

Attorney for Mary Elizabeth Blue Hull Memorial Presbyterian Church, a Georgia nonprofit corporation, and Eastern Heights Presbyterian Church, a Georgia nonprofit corporation

305 Realty Building
Savannah, Georgia 31401

CERTIFICATE OF SERVICE

I, Owen H. Page, counsel for Movants, hereby certify that I have served a copy of the foregoing Motion and attached brief by depositing a copy of the same in the United States mail, properly stamped and addressed to the following:

Mr. Douglas P. Beighle
Perkins, Coie, Stone, Olsen & Williams
1900 Washington Building
1325 Fourth Avenue
Seattle, Washington 98101

This 8 day of November, 1971.

OWEN H. PAGE

Mr. Alfred J. Schweppe
Schweppe, Doolittle, Krug & Tausend
657 Colman Building
Seattle, Washington 98104

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, A GEORGIA NONPROFIT CORPORATION, AND EASTERN HEIGHTS PRESBYTERIAN CHURCH, A GEORGIA NONPROFIT CORPORATION

THE STATUS OF THE AMICI CURIAE

The Movants because of their appearances in prior litigation before this Court have a deep interest in this case and consider it important to all churches that the "neutral principles" of *Presbyterian Church in the United States et al.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church et al.*, which have been jeopardized by the Supreme Court of Washington, be reaffirmed by this Court by granting the writ of certiorari to the Supreme Court of Washington and reversing the judgment of the Supreme Court of Washington. This Court's decision in *Hull* has been a source of hope and resolution for innumerable local churches which find themselves faced with a wrenching dilemma because of denominational aberrations. *Hull* is their refuge and strength.

THE OPINION BELOW

The opinion of the Supreme Court of Washington is printed in Appendix "B" of the Petitioners' brief. It is reported in 79 Wn. 2d 367, 485 P. 2d 615.

STATEMENT OF THE CASE

As the facts in this case are fully stated in the petition for the writ of certiorari, the *amici curiae* wish to incorporate them in this brief. Further, the *amici curiae* join in all that is stated in the Petitioners' brief.

ARGUMENT

I. The Supreme Court of Washington Has Flouted the Command of This Court As It Did Not Apply the "Neutral Principles" of Law Developed for Use in All Property Disputes

The proscription in *Hull* is pronounced: Courts are not to become implicated in extensive inquiry into a church governing body. In face of this directive, the Supreme Court of Washington affirmed the decision of the trial court which by its own admissions (Findings of Fact and Conclusions of Law) indulged in an extensive inquiry into the administrative structure of the denomination. This the trial court did over the vigorous objection of the Petitioners. Cavalierly, the trial court ignored the Petitioners' protest.

Upon church polity and adminstrative discipline of the denomination, the trial court decided for the Respondents in this property dispute. This error could, and should, have been corrected by the Supreme Court of Washington, but it too defied the imperative of *Hull*.

In *Hull*, this Court elevated the objective test over the church polity oriented one of *Watson* when it said:

> "Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *And there are neutral principles of*

> *law, developed for use in all property disputes,* which can be applied without 'establishing' churches to which property is awarded." (Emphasis added)

Continuing, the Court said:

> ". . . the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions."[1]

In *Maryland and Virginia Eldership of the Church of God et al.* v. *the Church of God at Sharpsburg, Inc. et al.*, 396 U. S. 367, 24 L. Ed. 2d 582, in which this Court dismissed the second appeal from the Court of Appeals of Maryland, Mr. Justice Brennan in amplifying the holding in *Hull* said:

> *"Under Watson civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, unlike the identification of the governing body, frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies which exercise general authority within a church is a matter of substantial controversy,* civil Courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy. In other words, the use of the Watson approach is consonant with the prohibitions

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1. 21 L. Ed. 2d at p. 665.

> of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity."[2] (Emphasis added)

The above amplification removed any doubt as to this Court's finding in *Hull*. In *Maryland and Virginia Eldership*, this Court ordained, "Thou shalt not engage in the probe of the allocation of church power or the controversial identity of church polity." To violate this command, as the Washington Court did, is to violate the First Amendment.

The Washington Court fused the function of government and church when it speculated:

> *"It would appear certain that the United States Supreme Court approved the rule laid down in Watson v. Jones, supra, that the decision of the highest tribunal of a hierarchical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to use church property."*[3] (Emphasis added)

Under the injunction of the First Amendment, this is prohibited, and prohibited absolutely.

II. The Supreme Court of Washington Transgressed This Court's Mandate in Hull and Maryland and Virginia Eldership v. Church of God at Sharpsburg When It Inquired into the Type of Church Polity to Make a Determination in a Church Property Dispute

This Court's decree in *Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church et al., supra*—eschew doctrine and

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2. 24 L. Ed. 2d at p. 584.

3. 485 P. 2d at p. 619.

employ "neutral principles"—is precise. It brooks no breach.

Yet as definite as the message is, as demonstrated by the strict adherence to it by the Indiana Supreme Court in *Merryman* v. *Price*, 259 N. E. 2d 883 (1970) and the Supreme Court of Ohio in *Serbian Orthodox Church Congregation of St. Demetrius* v. *Kelemen*, 21 Ohio St. 2d 154, 256 N. E. 2d 212 (1970), the Washington Court applied the outlawed precedent of *Watson*—examination of church polity. In doing so, it entered the theological thicket which this Court by *Hull* demarcated, "NO TRESPASSING".

The Supreme Court of Indiana in the new constitutional climate of *Hull* in *Merryman* v. *Price, supra*, applied the formal title rule (neutral principles) in refusing to inquire into the hierarchical structure of the denomination. The Court found:

> "The total impact of the *Mary Elizabeth Blue Hull* case as decided by the Supreme Court of the United States and by the Supreme Court of Georgia on remand is to render impotent the implied trust theory in so far as such theory is based upon principles of ecclesiastical law, church doctrine, or church discipline."

Continuing, the Court observed:

> "In short, the position of the Appellants in this case cannot be sustained without reference to ecclesiastical law, church discipline or church doctrine. It is equally clear that the result in this case sought by the Appellees can be justified on neutral principles of property law without reference to ecclesiastical law, church discipline or church doctrine." (259 N. E. 2d at p. 893)

The finding of the Supreme Court of Ohio in *Serbian Orthodox Church Congregation of St. Demetrius* v. *Kelemen, supra,* is in harmony with the judicial determination

of the Indiana Supreme Court in *Merryman*. As in the Indiana case, the Supreme Court of Ohio had before it a property controversy involving a denomination of a hierarchical structure. In reversing the holding of the lower court, the Supreme Court of Ohio under the ordinance of *Hull* held:

> "While we recognize that these matters (organizational relationship of the Mother Church) of internal church organization are chronic sources of disagreement for the parties . . . , the findings of the Court of Appeals are unnecessary and immaterial to a *neutral* law inquiry utilizing principles of law developed for use in *all* property disputes. *Further, the Hull Memorial case offers the strong suggestion that civil courts cannot constitutionally determine* matters of church government."[4] (Emphasis added)

Upon review of the lower court's decision, the Supreme Court of Ohio concluded:

> "After our elimination from consideration of those Court of Appeals' findings regarding church organization on the basis that they are immaterial to neutral law inquiry . . . , what neutral law principles are available as standards in the evaluation of the merits of the dispute? *We look to the ordinary indicia of property rights.*"[5] (Emphasis added)

Contrary to the parochial view taken by the Washington Court in the interpretation of *Hull*, the Supreme Courts of Indiana and Ohio grasped the full impact of *Hull* and gave it the application intended by this Court in *Hull* and *Maryland and Virginia Eldership* v. *Church of God at Sharpsburg, supra*. Impressive to this Court should be the similarity of the church polity between that of the denominations in the Indiana and Ohio cases and that of the

---

4. 256 N. E. 2d at p. 216.

5. 256 N. E. 2d at p. 216.

denomination of the Respondent Presbytery. Both the Indiana and Ohio courts categorically refused to consider church organization. They resolved the property dispute on the basis of deeds, reverter clauses, and the general state corporation laws. All of these are secular authorities which assure the abstinence from ecclesiastical inquiry.

The Washington Court offended *Hull* when it bypassed the secular law of property and followed the tortuous route of ecclesiastical organization. It did this when it used as its road map the Book of Church Order of the denomination.

III. The Washington Supreme Court Erred When It Found That Hull Followed Watson v. Jones

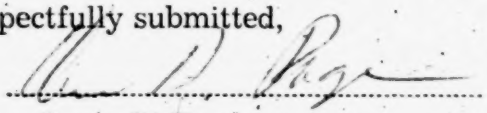
How the Washington Court could conclude that *Hull* approved the holding in *Watson* that a civil court can enforce an ecclesiastical decree is perplexing. Had this Court so ruled in *Hull*, the denomination would have prevailed. For the administrative commission appointed by the Presbytery in *Hull* had taken action similar to that of the Seattle Presbytery. Had this Court wished to have affirmed the church polity oriented rule of *Watson*, it would merely have reversed the Georgia Supreme Court. This Court did not charge the Georgia Court on remand to enforce an edict of an ecclesiastical tribunal.

The Washington Court has made *separation* synonymous with *subservience*. The First Amendment prohibits.

CONCLUSION

Wherefore, it is respectfully requested that this Court grant the petition for a writ of certiorari to the Supreme Court of Washington, and reverse the judgment and direct the Supreme Court of Washington to enter a judgment in favor of the Respondents.

Respectfully submitted,



OWEN H. PAGE

Attorney for Mary Elizabeth Blue Hull Memorial Presbyterian Church, a Georgia nonprofit corporation, and Eastern Heights Presbyterian Church, a Georgia nonprofit corporation

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IN THE

Supreme Court of the United States

October Term, 1971
No. 71-563

JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,
Petitioners,

v.

THE PRESBYTERY OF SEATTLE, INC., a nonprofit Washington corporation, and WILLIAM H. GOLEEKE, being a member of the Laurelhurst United Presbyterian Church and representing all others similarly situated,
Respondents.

SUPPLEMENTAL BRIEF

SCHWEPPE, DOOLITTLE, KRUG & TAUSEND
ALFRED J. SCHWEPPE
Attorneys for Petitioners

Office and Post Office Address:
657 Colman Building
Seattle, Washington 98104
MAin 3-7520

CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

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IN THE

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JAMES R. ROHRBAUGH, LAURELHURST UNITED PRESBYTERIAN CHURCH, INC., a Washington nonprofit corporation, and ALLEN PRIER, chairman of the Board of Trustees and representing all other trustees similarly situated, and RALPH SCHREINER, R. W. SPRAGUE, S. R. HANSEN, C. W. GIBBS, R. T. DOWNS, JERRY JOURNEY, EARL E. MCMILLAN, FRANK JOHNSON, KARL HOUSE, ARNOLD J. CARLSON, DR. DOO SOO SUH, PHIL GALLAHER, DR. KIRK DOUGLAS, GLEN CARSON and EWART SUFFEL, being the Elders and members of the Session and some of the withdrawing members of the Laurelhurst Church and representing all others similarly situated,

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Respondents.

SUPPLEMENTAL BRIEF

PREFACE

Respondents not having filed an opposing brief, petitioners respectfully submit this supplemental brief under Rule 24(5).

After the petition for *certiorari* was filed herein, it came to the notice of petitioners' counsel that on October 12, 1971, this court had dismissed "for want of a substantial federal question" the appeal in *Second United Presbyterian Church of Johnstown v. Presbytery of Albany*, 35 A.D.2d 252, 315 N.Y.S.2d 428, 28 N.Y.2d 772, 321 N.Y.S.

2d 377, 269 N.E. 918. This court's dismissal is reported in the Supreme Court Reporter of November 15, 1971, as 92 S.Ct. 80.

This New York case does not apply to the present case. There title to church property was specifically adjudicated under the directly applicable section 17-b of the Religious Corporation Law of New York, a statutory solution of the title problem wholly consistent with *Hull*, 393 U.S. 440 (1969) and *Maryland and Virginia Eldership*, 396 U.S. 367.

In *Maryland and Virginia Eldership*, 396 U.S. 367, dismissing the appeal for want of a substantial federal question (always a decision on the merits) this court pointed out that the Maryland court relied on religious corporation laws and deeds to the local church corporation. Mr. Justice Brennan, concurring (p. 370) stated that "neutral principles of law" included consideration of state corporation laws. Hence the recent New York case, in which this court dismissed the appeal on October 12, 1971, falls squarely into the category of controlling state statutes as did *Maryland and Virginia Eldership, supra*.

Here no such statute is involved. Here the trial court (see Appendix D) examined in its Findings (Appendix D. Petition pp. A22-32) the individual ecclesiastical procedures followed by the respondent Presbytery, decided matters of church doctrine and practice, as, for example, that under the Book of Order (an ecclesiastical document —see Petition, Appendix F) and practice of the national church, no local church could withdraw. This incursion into religious doctrine and practice in these Findings and Conclusions on ecclesiastical procedures and doctrines

was affirmed by the Washington State Supreme Court in this case—all in violation of *Hull*, 393 U.S. 440, and *Maryland and Virginia Eldership*, 396 U.S. 367.

CONCLUSION

A current review of the state court cases shows that they are in hopeless and irreconcilable conflict in their interpretation of *Hull*.

On the one hand, we have the majority view of the decisions in Maryland, Georgia, Ohio and Indiana upholding (absent any controlling statute) the formal title approach as being the proper interpretation of *Hull*, avoiding any inquiry into or determination of church doctrine or practice, and upholding title in local church corporations. These cases are listed in the Appendix to this Supplemental Brief.

To this group, anticipating *Hull*, may be added *First English Lutheran Church v. Evangelical Synod of Kansas*, 135 F.2d 701 (Tenth Circuit) quoted from in the appendix to this Supplemental Brief.

The law reviews support this position:

54 Iowa Law Review, 899, 907 (1969)

XXVII Washington & Lee Law Review, 44-69, especially p. 68 (1970)

74 Yale Law Journal, 1113, 1137 (1963)

On the other hand, upholding ownership in the national church as against the local church corporations, we have the Supreme Court of the State of Washington in the instant case and the Supreme Court of Pennsylvania in several cases, especially *Pilgrim Holiness Church v. Pilgrim Holiness Church of Athens Township*, 436 Pa. 239, 259

A.2d 870 (1969). Both Washington and Pennsylvania make determinations of religious law and practice.

Roberts, J., dissenting in the companion Pennsylvania cases, pointed out the violation of *Hull* (259 A.2d at p. 425).

This conflict of state court decisions and contrariety of results can be resolved only by an opinion of this court spelling out the guidelines further so that the state courts cannot misunderstand.

Mr. Justice Brennan's concurring remarks about "inquiry into religious polity" in *Maryland & Virginia Churches v. Sharpsburg Church*, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499 (1970), joined by Justice Douglas and Marshall, while helpful to our position, are unfortunately not the expressed view of the majority of the court. Until there is a further opinion by the whole court, the legal position of thousands of churches and millions of parishioners will be in doubt and confusion, with resulting great damage to losing congregations.

A mere glance at the Findings of Fact and Conclusions of Law set forth in Appendix D of our petition for *certiorari*, shows that the trial court, over denial in the answer, decided that the national church was Presbyterian in form (Finding IV, Petition, p. A-25), that the plaintiff Presbytery had properly taken detailed steps under ecclesiastical law "pursuant to the Book of Order" to obtain possession of the church property (Findings IX and X, Petition, p. A-27), and "that there is no provision under the Constitution, Book of Order, or Book of Discipline of the United Presbyterian Church in the United States of

America for a congregation or church to withdraw from the denomination." (Finding XII, Petition, p. A-28)

How could any deeper and more detailed "inquiry into religious polity" and "religious doctrine and practice" be made?

Please note in this connection the decision of the Tenth Circuit in *First English Lutheran Church*, quoted above, and the decision of the Maryland court (254 A.2d 162, 170) quoted on page 18 of our petition, both holding that the right to withdraw under the internal ecclesiastical rules of the church could not constitutionally be inquired into by a civil court.

Only this court can resolve the conflict.

We respectfully urge that the writ issue.

Respectfully submitted,

SCHWEPPE, DOOLITTLE, KRUG & TAUSEND
ALFRED J. SCHWEPPE
Attorneys for Petitioners

APPENDIX A

I.

Cases Upholding Title of Local Church Corporations

1. *Maryland & Virginia Eldership etc. v. Church of God*, 393 U.S. 528, 21 L.Ed.2d 750, 89 S.Ct. 850 (1969), remanding 249 Md. 650, 241 A.2d 691 (1968) for further consideration in the light of *Hull*, and dismissing appeal from the ensuing second Maryland decision, 254 Md. 162, 254 A.2d 162 (1969) in 396 U.S. 367.

2. *Presbyterian Church in the United States v. Hull Memorial Church*, 224 Ga. 61, 159 S.E.2d 690 (1968), 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969) remanding for further consideration in the light of *Hull*, and *certiorari* denied in ensuing second Georgia case, 225 Ga. 259, 167 S.E.2d 658 (1969) in 396 U.S. 1041, 24 L.Ed.2d 685, 90 S.Ct. 680 (1970).

3. *Serbian Orthodox Church Congregation of St. Demetrius of Akron v. Keleman*, 22 Ohio St.2d 154, 156 N.E.2d 212 (March 4, 1970), *certiorari* denied October 12, 1970, 91 S.Ct. 54. This case had been remanded for further consideration in the light of *Hull*, 393 U.S. 527 (1969).

4. *Merryman v. Price*, ...Ind....., 259 N.E.2d 883 (June, 1970). This case, containing an excellent analysis of *Hull*, affirmed title in the local church where the position of the general church could not be sustained without reference to ecclesiastical law, church discipline or church doctrine.

5. Actually *Hull* was anticipated by the Tenth Circuit

in *First English Lutheran Church v. Evangelical Lutheran Synod of Kansas,* 135 F.2d 701 (1943) where the court said (p. 702):

> "Extended argument is submitted in respect of the power of the church to withdraw from the Synod of Kansas without its consent. A civil court will not review acts of a religious organization relating solely and exclusively to an internal ecclesiastical affair for the sole purpose of ascertaining whether they are regular or in accordance with the polity, discipline or usages of the organization."

That the case was like the instant case is shown by the following quotation (p. 703):

> ". . . in most if not all the cases in which a civil court has exerted its equitable jurisdiction to protect a property right, the action was instituted by the trustees or other officers of the church having legal title to the property, or by members of a faction in the church who sued for themselves and as members of a class having a beneficial interest in the property. That was not done here. The Synod of Kansas alone brought this action solely in its own behalf. The edifice and other property in question belongs to the church at Oklahoma City, a corporation. Title has never been vested in the Synod of Kansas. And the synod does not have any beneficial interest in the property which would be violated by the transfer of synodical affiliation. In the early years of the existence of the church, the synod made financial contributions to the church, but it is not alleged or shown that as the result of such contributions it acquired or has a lien upon the property or other beneficial interest in it."

II.

Cases Upholding Title In the National Church

1. The Supreme Court of the State of Washington in the instance case, 79 Wn.2d 367, 485 P.2d 615 (1971).

2. (a) *Pilgrim Holiness Church v. Pilgrim Holiness Church of Athens Township*, 436 Pa. 239, 259 A.2d 870 (1969), Roberts, J., dissenting.

(b) *St. John Chrysostom Greek Catholic Church v. Elko*, 436 Pa. 243, 259 A.2d 419 (1969), Roberts, J. dissenting.

(c) *St. Michael and Arch Angel. Russian Orthodox Greek Catholic Church v. Uhiniat*, 436 Pa. 222, 259 A.2d 862, Roberts, J., dissenting.

IN THE

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

RESPONDENTS' BRIEF IN OPPOSITION

PERKINS, COIE, STONE, OLSEN & WILLIAMS
DOUGLAS P. BEIGHLE
RANDALL REVELLE
1900 Washington Building
Seattle, Washington 98101
Attorneys for Respondents

February 18, 1972

CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

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QUESTIONS PRESENTED FOR REVIEW

1. Should the Washington Supreme Court be permitted to follow *Watson v. Jones*, 80 U.S. 679 (1872),[1] as it has done continuously for over seventy years?

2. Did the Washington Supreme Court correctly apply the *Watson* "rule of action," as recently approved by the *Hull Church* case,[2] by accepting as "final and binding" the decisions of Respondent Presbytery of Seattle, Inc.[3] with respect to the control of the Laurelhurst United Presbyterian Church, Inc.[4] and its property?

1. Hereinafter cited as "*Watson*."
2. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).
3. Hereinafter the "Presbytery."
4. Hereinafter the "Laurelhurst Church."

3. Even if this Court decided to *require* the Washington Supreme Court to apply "neutral principles of law," thereby overruling *Watson* and *Hull Church*, would the Washington Supreme Court reach the same result pursuant to the "neutral principles of law" found in the Articles of Incorporation and the Bylaws of the Laurelhurst Church?

STATEMENT OF THE CASE

Most of Petitioners' Statement of the Case (Pet. 5-12) is irrelevant to the issues before this Court. Moreover, Petitioners fail to include many facts that are essential to a full understanding of those issues. The following briefly corrects these problems.

I. Nature of the Case

Contrary to Petitioners' contention (Pet. 5), this case does not involve a dispute over the *ownership* of real and personal property of the Laurelhurst Church. It involves an equitable action brought by Respondents to enjoin Petitioners from interfering with the right and the duty of Respondent Presbytery to preserve and protect, the Laurelhurst Church property for the use and benefit of the United Presbyterian Church in the United States of America.[5] (FF XIV, Pet. App. A-29) The trial court's Decree (Pet. App. A-33 to A-36) restrains Petitioners from diverting the Laurelhurst Church property to their own uses contrary to the Constitution of the United Presbyterian Church, the final and binding orders of Respondent

5. Hereinafter the "United Presbyterian Church." In 1958, the United Presbyterian Church of North America and the Presbyterian Church in the United States of America merged to form the United Presbyterian Church in the United States of America. All parties concerned herein have accepted the United Presbyterian Church in the United States of America as the lawful successor of both merged churches. (FF V, Pet. App. A-26)

Presbytery, and the Articles of Incorporation and Bylaws of the Laurelhurst Church.

II. Summary of the Facts

A. *The "Hierarchical Structure" of the United Presbyterian Church.*

The United Presbyterian Church is a religious society organized and existing pursuant to the laws, rules, and regulations adopted by and applicable to it, which are set forth in that portion of its Constitution designated as "The Book of Order." (FF IV, Pet. App. A-24)

The lay members and clerical members of the United Presbyterian Church are organized into particular churches. Under its Constitution, its system of church government is "Presbyterian," with the various components of the church constituting one united sovereign church and the units being integral parts of the sovereign church. In the Presbyterian form of government, the congregation is but a subordinate member of a general church organization in which there are superior ecclesiastical tribunals, with a general and ultimate power of control in some supreme judicatory over the whole membership. (FF III and IV, Pet. App. A-24 to A-25) This is in contrast to the "Congregational" form of church government, wherein each congregation is strictly independent and owes no fealty or obligation to any higher authority.

There are four "judicatories" within the United Presbyterian Church, as follows (in ascending order):

(1) The "Session" is composed of elders of the local church, over which the pastor presides as moderator;

(2) The "Presbytery" is composed of representatives of several churches in a certain geographical area;

(3) Presbyteries in turn are organized within the church into 33 groups known as "Synods," the Synod in this case being the Synod of Washington-Alaska; and

(4) All of the particular churches and judicatories are in turn organized and subject to the jurisdiction of the "General Assembly," which is the supreme governing body of the United Presbyterian Church. (FF III, Pet. App. A-24)

B: *The Actions Taken by the Laurelhurst Church and by Respondent Presbytery.*

Prior to October 1967, representatives of Respondent Presbytery met with representatives of the Laurelhurst Church and advised them of the proper procedures under the Constitution of the United Presbyterian Church for resolving their dispute over the Laurelhurst Church property. (Pl. Ex. 13, R. 149) Representatives of Respondent Presbytery attended the October 5, 1967 meeting of the Laurelhurst Church congregation and advised that:

(1) Individual members may withdraw from the Laurelhurst Church, but the Constitution of the United Presbyterian Church has no provision for a congregation or church to withdraw as a unit.

(2) All property belonging to congregations of the United Presbyterian Church is held by the congregation on behalf of the Presbytery of jurisdiction, no matter how the title or deed reads. (Pl. Ex. 13, R. 149)

Notwithstanding this advice the Laurelhurst Church congregation, with but 194 of its approximately 600 members present at the October 5, 1967 meeting, voted 183 to 11 in favor of (1) withdrawing as a congregation from

the United Presbyterian Church and (2) asking Respondent Presbytery to erase the name of the Laurelhurst Church and its pastor from the rolls of Presbytery. (FF XI, Pet. App. A-27) The congregation also asked that it be allowed to retain the Laurelhurst Church property. (Pl. Ex. 13, R. 149)

Respondent Presbytery, at its October 17, 1967 meeting, ruled in response to the above requests that the Laurelhurst Church congregation be advised as follows:

> (1) ". . . that the Constitution has no provision whereby the name of a particular church can be erased from the rolls of Presbytery by action of a minority of the congregation, or even by unanimous action of the congregation. Therefore, Laurelhurst United Presbyterian Church . . . shall continue to remain on the rolls of the Presbytery of Seattle."
>
> (2) ". . . that there is no constitutional authority or provision whereby the majority of the members of a congregation or a minority group thereof, can take any constitutional action to withdraw from the United Presbyterian Church in the United States of America. Therefore the action taken by the congregation on October 5, 1967, 'to erase from the roll of the Presbytery of Seattle the name of the Laurelhurst United Presbyterian Church,' has no constitutional basis under the Constitution of the United Presbyterian Church in the d.S.A. [sic]."
>
> (3) ". . . that the minority group of 183 have no constitutional authority to agree or decide to advise the Presbytery of Seattle that the congregation of the Laurelhurst United Presbyterian Church . . . desires to have the name of the Laurelhurst United Presbyterian Church or the name of its pastor deleted from the rolls of Presbytery, and further that said group has no constitutional right or authority to retain the property of the church."
>
> (4) ". . . that they [the pastor, session, and congregation] are still under the jurisdiction of the Presby-

tery of Seattle and the Constitution of the United Presbyterian Church in the United States of America." (Pl. Ex. 13, R. 149)

In addition, after proper notice, Respondent Presbytery removed Petitioner Rohrbaugh as pastor of the Laurelhurst Church, declared the pulpit vacant, and replaced the Session of the Laurelhurst Church with an elected Administrative Commission having full powers of Session. (FF VIII to X, Pet. App. A-26 and A-27)

Although the Constitution of the United Presbyterian Church provides for appeals to the Synod of Washington-Alaska and to the General Assembly, none of the above decisions by Respondent Presbytery was appealed to these higher judicatories. (FF IX and X, Pet. App. A-27) Therefore each of the above decisions is a final decision by the highest judicatory within the United Presbyterian Church to which it has been taken.

C. *Petitioners' Actions in Violation of the Orders of Respondent Presbytery.*

Notwithstanding the fact that Respondent Presbytery took the actions cited above, Petitioner Rohrbaugh continues to act as pastor of the Laurelhurst Church. He and the Petitioners who formerly comprised the Session of the Laurelhurst Church are interfering with the Administrative Commission duly appointed by Respondent Presbytery, even though the Commission has the powers of Session pursuant to the Constitution. Petitioners refuse to allow the Commission to enter the Laurelhurst Church property or to operate with the powers of Session. They have renounced the authority of Respondent Presbytery and have stated they will not follow the Constitution of the United Presbyterian Church. They also refuse to allow

members of the Laurelhurst Church congregation who remain loyal to the United Presbyterian Church to hold a congregational meeting in the church, even if called by the Administrative Commission. (FF XV to XVIII, Pet. App. A-29 and A-30)

III. The Proceedings Below

In his Memorandum Opinion of March 12, 1969 (Pet. App. A-1 to A-10), the trial court judge ruled that in *Hull Church* this Court reaffirmed the principle established in *Watson* and other decisions of this Court that in the absence of fraud, collusion, or arbitrariness the decisions of proper church tribunals on matters purely ecclesiastical, although affecting property rights, are accepted in litigation before the secular courts as conclusive because the parties in interest made them so by contract or otherwise. The Memorandum Opinion quotes at length from the opinion of Mr. Justice Brennan in *Hull Church*, from several other cases involving the Presbyterian Church that were cited with approval by this Court in *Hull Church*, and from two relevant decisions of the Washington Supreme Court. The trial court then granted the equitable relief requested by Respondents and signed a Decree to that effect on May 9, 1969. (Pet. App. A-33 to A-36)

The Washington Supreme Court, sitting *en banc*, unanimously affirmed the trial court's decision. *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 485 P.2d 615 (1971). The Washington Supreme Court concluded that this Court approved the rule of *Watson* that "the decision of the highest tribunal of a hierarchical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to church property."

79 Wn.2d at 373, 485 P.2d at 619. Based on the *Watson* "rule of action," the Washington Supreme Court accepted as "final and binding" the decision of Respondent Presbytery that Petitioners had withdrawn from the Laurelhurst Church corporation, thereby forfeiting any right to govern the corporation or to control the use of its property. 79 Wn.2d at 373, 485 P.2d at 619.

ARGUMENT

I. Summary of the Argument

Pursuant to Supreme Court Rule 19, the Petition for a Writ of Certiorari to the Supreme Court of the State of Washington[6] should be denied by this Court because: (1) the Washington Supreme Court did not decide a substantial federal question which has not already been decided by this Court, (2) the decision of the Washington Supreme Court is in accord with the applicable decisions of this Court, and (3) there are no other "special and important reasons" for granting certiorari in this case.

The Washington Supreme Court based its decision in the present case on the *Watson* "rule of action," one of the three approaches to resolving church property disputes permitted by *Hull Church* and other relevant decisions of this Court. The Washington Supreme Court correctly applied the *Watson* "rule of action" by recognizing that the United Presbyterian Church has a "hierarchical structure" and then by accepting as "final and binding" the ecclesiastical decisions of Respondent Presbytery with respect to the control of the Laurelhurst Church and its property.

In reaching its decision, the Washington Supreme Court

6. Hereinafter the "Petition."

did not unconstitutionally resolve a controversy over church doctrine, polity, or practice. Nor does the Court's decision conflict with the decisions of other states which have applied "neutral principles of law," since *Hull Church* permits alternative approaches to resolving church property disputes.

Contrary to Petitioners' claim, the Washington Supreme Court is not *required* by *Hull Church* to rely exclusively on "neutral principles of law" to resolve church property disputes. However, even if this Court were to overrule *Watson*, *Hull Church*, and other relevant decisions of this Court by requiring the application of "neutral principles of law," the result in the present case would be the same.

Petitioners have shown no other "special and important reasons" for this Court to grant their Petition. The Washington Supreme Court has not denied Petitioners their religious freedom since they are not prevented from withdrawing individually from the Presbyterian Church to practice the religion of their choice. Nor is this a case of national importance. The Washington Supreme Court has simply followed the *Watson* "rule of action" as it has done since 1898 and as this Court has permitted it to do since 1872.

II. Argument in Support of Judgment

A. *The Washington Supreme Court Correctly Interpreted and Followed Controlling Decisions of This Court on the Role of Civil Courts in Church Property Disputes.*

The role of the civil courts with respect to questions concerning church doctrine or faith, ecclesiastical law, church polity, or the use of church property has been before this Court on several occasions. The landmark case

is *Watson*, which arose out of a schism in the Louisville Presbyterian Church caused by the issue of slavery. Ruling in favor of the faction that remained loyal to the national Presbyterian Church, *Watson* held that in a property dispute involving a church of hierarchical polity, the civil courts must accept as "final and binding" in the cases before them the ecclesiastical decisions of the highest church tribunal to which the dispute has been taken.

The *Watson* opinion classified the three types of questions concerning the rights to property held by ecclesiastical bodies which had come before the civil courts:

> "1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.
>
> "2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.
>
> "3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization." 80 U.S. at 722.

The *Watson* case was of the third type of these classes, of which the Court said:

> "The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and

which appeals to the courts to determine the right to the use of the property so acquired . . . . [Here is a case] of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. . . . *[I]n cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments.* There are in the Presbyterian system of ecclesiastical government, in regular succession, the Presbytery over the session or local church, the Synod over the Presbytery, and the General Assembly over all. These are called, in the language of the church organs, 'judicatories,' and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases.

"*In this class of cases we think the rule of action which should govern the civil courts,* founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, *whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.*" 80 U.S. at 726. (Emphasis added.)

Watson further discussed the above "rule of action" that civil courts must accept the ecclesiastical decisions of a hierarchical church as final and concluded:

"The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and offi-

> cers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. *It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.*" 80 U.S. at 728. (Emphasis added.)

On several occasions, the "rule of action" set forth in *Watson* has been cited with approval by this Court. In a case involving a question of whether the Roman Catholic Archbishop of the Philippines was entitled to decide who had the right to a chaplaincy without having that decision reviewed by a civil court, this Court stated:

> "In the absence of fraud, collusion or arbitrariness, the decisions of the proper Church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929),[7] citing *Watson*.

The *Watson* and *Gonzalez* cases were followed by *Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94 (1952),[8] which converted the principles of *Watson* and *Gonzalez* into a rule of federal constitutional law under the free exercise of religion clause of the First Amendment:

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7. Hereinafter cited as "*Gonzalez*."
8. Hereinafter cited as "*Kedroff*."

During the period subsequent to *Watson*, the Georgia courts had established the principle that an implied trust of church property existed in favor of the general church, unless the general church made a substantial departure from its tenets of faith and practice. This exception required a judicial inquiry to determine whether actions of the general church constituted such a "substantial departure" from the tenets of faith and practice existing at the time of the local church's affiliation that the trust in favor of the general church must be declared terminated. This type of inquiry was approved by the Georgia Supreme Court in *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 224 Ga. 61, 159 S.E.2d 690 (1968).

In *Hull Church* this Court reaffirmed the principles of *Watson* and reversed the Georgia Court because it had violated the First Amendment to the Constitution. This Court held that "the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, [do not] permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." 393 U.S. at 441.

In *Hull Church* this Court also confirmed that:

> "It is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution. Special problems arise, however, when these disputes implicate controversies over church doctrine and practice. The approach of this Court in such cases was originally developed in *Watson v. Jones*, 13 Wall. 679, 20 L.Ed. 666 (1872), a . . . decision . . . informed by First Amendment considerations." 393 U.S. at 445.

After discussing the similarity between the factual situations of *Watson* and *Hull Church*, this Court quoted extensively from that portion of the *Watson* opinion which "has a clear constitutional ring,"[9] concluding with the principle that:

> "It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." 393 U.S. at 446.

This Court then "recognized that there might be some circumstances in which marginal civil court review of ecclesiastical determinations would be appropriate." 393 U.S. at 447. This Court indicated that such a marginal judicial involvement was contemplated by *Gonzalez*. That portion of Mr. Justice Brandeis' opinion in *Gonzalez* discussed above at page 12 of this Brief was quoted with approval:

> "'In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.' 280 U.S., at 16." 393 U.S. at 447.

In *Hull Church*, this Court then indicated that in *Kedroff* "the Court converted the principle of *Watson* as qualified by *Gonzalez* into a constitutional rule." 393 U.S. at 447. Thus, *Hull Church* approved the "rule of action" developed in *Watson* and *Gonzalez* that the decisions of hierarchical church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation

9. Set forth above on pages 11 and 12 of this Brief.

before the civil courts as final and binding in the absence of fraud, collusion, or arbitrariness.[10]

In *Hull Church* this Court also recognized, however, that the "rule of action" defined by *Watson* and *Gonzalez* was not the exclusive way for civil courts to resolve church property disputes. Civil courts are free to adopt another approach consistent with the First Amendment—basing their decisions on "neutral principles of law, developed for use in all property disputes." *Hull Church* explained this approach as follows:

> "Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which *can* be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice." 393 U.S. at 449. (Emphasis added.)

The conclusion that *Hull Church* allows *but does not require* the civil courts to adopt alternatives to the *Watson*

10. The majority of legal articles on *Hull Church* support this conclusion. See Comment, *Constitutional Law—Church Property Disputes—First Amendment Prohibits Judicial Examination of Ecclesiastical Matters*, 54 Ia. L. Rev. 899 (1969); Comment, *Hull Memorial: A Limited Solution to the Problem of Judicial Intervention in Church Property Disputes*, 18 Kan. L. Rev. 71 (1969); Comment, *Limitations on the Power of Courts in Resolving Church Property Disputes*, 36 Tenn. L. Rev. 549 (1969); Kauper, *Church Autonomy and the First Amendment: The Presbyterian Church Case*, 1969 Sup. Ct. Rev. 347 (1969); Note, *Constitutional Law—Judicial Intervention in Church Property Disputes*, XLIV Tul. L. Rev. 370 (1970); 33 Alb. L. Rev. 388 (1969); 53 Marq. L. Rev. 145 (1970); and 22 Vand. L. Rev. 674 (1969).

"rule of action" for handling church property disputes was clearly explained in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970).[11]

In a per curiam opinion, this Court dismissed an appeal from the Maryland Court of Appeals for want of a substantial federal question. The Maryland court had incorrectly interpreted *Hull Church* as *requiring* that civil courts dispose of church property disputes upon "neutral principles of law." *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 254 Md. 162, 168, 254 A.2d 162, 165 (1969). In *Church of God*, Mr. Justice Brennan, joined by Mr. Justice Douglas and Mr. Justice Marshall, added a concurring opinion that corrected the Maryland court and affirmed what this Court meant in *Hull Church*.

Discussing the *Hull Church* case, Mr. Justice Brennan explained that "[I]t follows that a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." 396 U.S. at 368. Mr. Justice Brennan then outlined three possible approaches that could be used by civil courts in resolving church property disputes. The first of these approaches was to follow *Watson*:

> "Thus the States may adopt the approach of Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666 (1872), and enforce the property decisions made within a church of congregational polity by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government, *id.*, at 724 and within a church of hierarchical polity

11. Hereinafter cited as "*Church of God.*"

> by the highest authority that has ruled on the dispute at issue, . . . Under *Watson* civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, unlike the identification of the governing body, frequently necessitates the interpretation of ambiguous religious law and usage." 396 U.S. at 368.

For any state that should decide not to follow *Watson* in resolving disputes over church property, Mr. Justice Brennan suggested two other possible approaches: "'[N]eutral principles of law, developed for use in all property disputes,'" and "the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine," provided that "[s]uch statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies." 396 U.S. at 370.

With respect to the use of "neutral principles of law," Mr. Justice Brennan cautioned that "[u]nder the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws," but that "general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues." 396 U.S. at 370. Thus, he pointed out, a state that normally resolves disputes over religious property by applying general principles of property law would have to use a different method in cases where provisions in deeds or in the constitution require a finding of departure from doctrine, suggesting that perhaps the approach would be that defined in *Watson*. 396 U.S. at 370, n. 4.

The Georgia Supreme Court, upon remand of the *Hull Church* case, applied the alternative of "neutral principles of law," rather than the *Watson* "rule of action." *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969). This was apparently an acceptable alternative to this Court and certiorari was denied from that decision. 396 U.S. 1041 (1970).

The language in the original *Hull Church* opinion clearly shows that this Court approved the "rule of action" of *Watson* and permitted the states to apply that rule. The concurring opinion in the *Church of God* case removes any possible question, if any ever existed, as to whether the state courts are free to continue to follow *Watson*, as many have done.

Thus, the Washington Supreme Court is free to apply the *Watson* "rule of action," just as it has done since it first cited the case with approval over seventy years ago in *Herman v. Plummer*, 20 Wash. 363, 55 Pac. 315 (1898).[12] In *Wilkeson v. The Rector, Wardens and Vestry of St. Luke's Parish*, 176 Wash. 377, 384, 29 P.2d 748, 751 (1934), the Washington Supreme Court approved the following "well recognized principle of law":

> "In the absence of fraud, where the right of property in a civil court is dependent on the question of doctrine, discipline, ecclesiastical law, rule, or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive and be governed by it in its application to the case before it." [Citing *Watson* and *Hendryx v. People's United Church of Spokane*, 42 Wash. 336, 84 Pac. 1123 (1906)].

12. See also *Grand Court of Washington, Foresters of America v. Hodel*, 74 Wash. 314, 133 Pac. 438 (1913).

The above language was quoted with approval by the Washington Supreme Court in *Hoffman v. Tieton View Community Methodist Episcopal Church*, 33 Wn.2d 716, 728, 207 P.2d 699, 705 (1949). The court also stated that "[p]erhaps the leading case on the question now being discussed is *Watson v. Jones*," from which it quoted extensively and held:

> "It is our opinion that the Methodist Church falls within the third group listed in *Watson v. Jones, supra.* Its organization is Presbyterian in form and not Congregational. As a result, it is our opinion that local churches are only parts of the larger body, and no local Methodist church may convert its property to a use not authorized by the superior church government." 33 Wn.2d at 729, 207 P.2d at 706.

Petitioners imply that prior to this case, the Washington Supreme Court had adhered to the "departure from doctrine" theory relied upon by the Georgia Supreme Court. (Pet. 9-10) To support this contention, Petitioners rely upon a quote taken out of context from *Seventh Elect Church in Israel v. First Seattle Dexter Horton National Bank*, 167 Wash. 472, 10 P.2d 207 (1932). Quoted in relevant context, it is obvious that this case does not support Petitioners' contention:

> "The appellants having withdrawn and seceded from the church now seek to recover their contributions whether in money or property, and seek compensation for services rendered.
>
> "The law is well settled that, where members of a church withdraw or secede, either singly or in a body, they forfeit all their rights to the church property. They cannot recover that which they voluntarily turned over to the church.
>
> " 'The separation or secession of part of the members from a church does not destroy the identity of

> the church or lessen the rights of those adhering to the organization, but members seceding from a church, thereby forfeit all rights to the church property *and the courts, when called upon, will award the property, and all rights pertaining thereto, to those who continue to adhere to the doctrine, tenets, and rules of the church as they existed before the division.'"* [Citations omitted.] 167 Wash. at 478, 10 P.2d at 208. (Emphasis added.)[13]

Moreover, the Washington Supreme Court recognized in the present case that it has long followed the *Watson* "rule of action":

> "This court has adopted the rule of *Watson v. Jones, supra,* in cases of this kind, having held in *Herman v. Plummer,* 20 Wash. 363, 55 P. 315 (1898) and *Hoffman v. Tieton View Community Methodist Episcopal Church,* 33 Wash.2d 716, 207 P.2d 699 (1949), that, in the absence of fraud, where a right of property in an action before a civil court depends upon a question of doctrine, ecclesiastical law, rule or custom, or church government, and the question has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive. The propriety of this rule was again recognized in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* We see no reason to abandon it." 79 Wn.2d at 373, 485 P.2d at 619.

The Washington Supreme Court should be allowed to apply the *Watson* "rule of action," as it has done for over seventy years and as it is permitted to do under the constitutional guidelines established by this Court in *Hull Church* and *Church of God.* There is no reason, constitutional or otherwise, why the State of Washington should be forced to adopt the approach of the State of Georgia in resolving church property disputes.

13. The portion of the quote taken out of context by Petitioners is in italics. (Pet. 10)

B. *Petitioners' Writ of Certiorari Should Be Denied Because Respondents Would Prevail Even if "Neutral Principles of Law" Were to Govern the Washington Supreme Court's Decision.*

Even if this Court were to overrule *Watson*, *Gonzales*, *Kedroff*, *Hull Church*, and the concurring opinion in *Church of God* by *requiring* that the Washington Supreme Court apply "neutral principles of law," Respondent Presbytery would be given control of the church property involved in this case. In applying "neutral principles of law" to resolve the dispute over the Laurelhurst Church property, the Washington Supreme Court would have to rely upon the Articles of Incorporation and the Bylaws of the Laurelhurst Church, which in turn incorporate the Constitution of the United Presbyterian Church.[14] As discussed below, these documents would lead the Washington Supreme Court to the same result it reached in applying the *Watson* "rule of action" to this case.

Under the Constitution of the United Presbyterian Church, the authority of an individual congregation, such as the Laurelhurst Church, is very limited. The authority over all of the affairs and activities of the Laurelhurst Church is vested in the Session, not in the congregation. A congregation has only the authority specifically accorded to it by the Constitution. Section 41.08 of the Form of Government, which is part of the Constitution, provides as follows:

"The church session shall have authority over all

14. In *Church of God*, this Court found that the Maryland Court's resolution of a church property dispute – based upon an extensive review of state statutory law, the deeds conveying the church property, the charters of the corporate congregations, and the constitution of the general church – did not involve an unconstitutional inquiry into religious doctrine. 396 U.S. at 368.

> of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory." (Pl. Ex. 1, R. 84)

The Form of Government does not give the congregation the right to withdraw en masse, as Petitioners have tried to do, and therefore they do not have that authority. (FF XII, Pet. App. A-28)

Both the Articles of Incorporation and the Bylaws of the Laurelhurst Church contain a number of restrictions which have been violated by Petitioners in renouncing Respondent Presbytery's jurisdiction and refusing to follow the Constitution of the United Presbyterian Church.

Article III of the Articles of Incorporation of the Laurelhurst Church recites in relevant part that:

> "The object and purpose of this corporation is to maintain religious services and stated meetings for worship of Almighty God . . . particularly the belief and practice adhered to by the denomination known as the United Presbyterian Church of North America [now the United Presbyterian Church in the United States of America, its lawful successor]; and to acquire . . . property of every kind and description . . . for the sole end of carrying out and securing the foregoing objects and purposes." (FF V, Pet. App. A-25)

Article IV of the Articles specifically sets forth that the pastor, elders, and trustees of the Laurelhurst Church are to be selected in accordance with the Constitution of the United Presbyterian Church, said officials to have only the authority granted by the Constitution. (FF V, Pet. App. A-25)

Article I of the Bylaws of the Laurelhurst Church, which were adopted at the annual congregational meeting of

January 27, 1959, requires that "*The organization, government and conduct of the affairs of the Congregation shall be subject to, and in conformity with, the 'Form of Government' as set forth in 'The Constitution of the United Presbyterian Church in the United States of America.'*" (Emphasis added.) (Pl. Ex. 3, R. 84) Article III of the Bylaws states that the duties of the Session are as prescribed in Chapter XI of the Form of Government, while Article IV states that the duties of the Board of Trustees are as prescribed in Chapter XXXII of the Form of Government. (Pl. Ex. 3, R. 84)[15]

Respondent Presbytery, acting under the authority of Section 41.15 of Chapter XI of the Form of Government (Pl. Ex. 3, R. 84), removed the Session of the Laurelhurst Church. The Session defied this order, notwithstanding the fact that Article III of its own Bylaws provides that the duties of the Session are as prescribed in said Chapter XI of the Form of Government. (Pl. Ex. 3, R. 84)

Thus, Petitioners have acted contrary to *their own* Articles of Incorporation and *their own* Bylaws by refusing to follow the Constitution of the United Presbyterian Church and the orders of Respondent Presbytery that were issued pursuant to that Constitution.

Moreover, the trustees of the Laurelhurst Church corporation have very limited authority with respect to the property of that church. Section 62.08 of the Form of Government provides:

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15. Prior to 1959 the Bylaws of the Laurelhurst Church contained essentially the same provisions. (Pl. Ex. 43, R. 555) These Bylaws were adopted at the annual meeting of the congregation on April 9, 1948 and were rewritten in January 1956 with changes through that date. These are the Bylaws that were in effect when the Laurelhurst Church acquired the disputed property.

> "Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also . . . to the permission of Presbytery as herein provided." (Pl. Ex. 1, R. 84)[16]

Thus, the Articles of Incorporation and the Bylaws of the Laurelhurst Church, which incorporate the Constitution of the United Presbyterian Church, give the control of the Laurelhurst Church property to Respondent Presbytery, not to Petitioners. Applying these "neutral principles of law," the Washington Supreme Court would reach the same result it reached under *Watson*. Therefore there is no reason for this Court to grant the Petition in the present case, even if it decided to overrule *Watson*, *Hull Church*, and other relevant decisions of this Court by *requiring* the application of "neutral principles of law" to resolve church property disputes.

III. Argument in Answer to Petitioners

The argument in this part is divided into eight sections. Sections A through F and Section H respond to Petition-

16. The uses which a particular church may make of property are also very limited by the Form of Government. Section 62.11 provides:

> "Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint . . . ." (Pl. Ex. 1, R. 84)

Section 62.12 provides:

> "A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church." (Pl. Ex. 1, R. 84)

ers' Argument on pages 12-19 of their Petition. Section G responds to Petitioners' Supplemental Brief.

A. *The Washington Supreme Court Followed the Constitutional Guidelines Established by This Court for Resolving Disputes Involving Church Property.*

Petitioners make two unsubstantiated claims that:

> (1) The Washington Supreme Court held that *Watson* and *Hull Church required* it to accept the decisions of an ecclesiastical tribunal in church property disputes; and
>
> (2) *Hull Church* held that civil courts *must* rest *all* church property decisions on "neutral principles of law." (Pet. 12-13)[17]

These unsubstantiated claims reflect Petitioners' fundamental misunderstanding of this Court's opinion in *Hull Church*. As discussed above at pages 13-18 of this Brief, *Hull Church* approved the *Watson* "rule of action," while providing that civil courts *may* (not must, as claimed by Petitioners) apply "neutral principles of law" in resolving church property disputes.

The Washington Supreme Court followed these constitutional guidelines, established by *Hull Church* and clarified by the *Church of God* case, by exercising the option of continuing to follow the *Watson* "rule of action," as it has done for over seventy years.

B. *In Resolving Church Property Disputes, the Washington Supreme Court Is Not Required by This Court to Rely Exclusively on "Neutral Principles of Law."*

Hull Church does not *require* the Washington Supreme

17. In addition, Petitioners assert that the Washington Supreme Court's recognition that the United Presbyterian Church has a "hierarchical structure" was based on "disputed findings." (Pet. 12) This assertion is wrong, as discussed below at page 29 of this Brief.

Court to rely exclusively on "neutral principles of law" in the present case, and the Washington Court did not purport to do so in basing its decision on the *Watson* "rule of action." Petitioners' contention to the contrary (Pet. 13-15) has been rebutted above at pages 13-20 of this Brief. Moreover, as discussed above at pages 21-24 of this Brief, even applying "neutral principles of law" the Washington Supreme Court would have granted control of the Laurelhurst Church property to Respondent Presbytery.

An additional comment on Section II of Petitioners' Argument is appropriate. Petitioners quote from a student note in *The Yale Law Journal*[18] as authority for their contention that the *Watson* "rule of action" is the "most objectionable rule." (Pet. 14) Petitioners' reliance upon quotes taken out of context from the Note is unfortunately characteristic of their use of legal authority throughout their Petition.

The quoted portion of the Note, taken from page 1137 of *The Yale Law Journal*, contends only that *under the "absolute wall" theory* the *Watson* "rule of action" is "the most objectionable rule." At page 1138 the authors of the Note point out that "the only view of the establishment clause which strongly conflicts with the principles derived from *Watson v. Jones* is the strict separation interpretation—the 'absolute wall' theory." In the author's opinion, however, the "absolute wall" theory is "the least acceptable theory of the establishment clause, and every rule for decision of church property disputes would be suspect

18. Note, *Judicial Intervention in Church Property Disputes – Some Constitutional Considerations*, 74 Yale L.J. 1113 (1965). (Hereinafter cited as "Note.")

under this interpretation." Note at 1138.[19] As the authors correctly acknowledge:

> "Under this [absolute wall] theory the establishment and free exercise clauses would always be in opposition, since enforcing a church decision would establish a religion, while refusing to enforce a church decision would establish the religion of the dissenters from that decision." Note at 1139, n. 96.

On the two pages following the statement quoted in the Petition, the authors of the Note suggest several other interpretations of the establishment clause, each of which follows *Watson*, supports the position of Respondents, and is contrary to the assertions of Petitioners.[20]

19. The authors also state:

> "The virtue of the 'formal title' policy lies solely in its simplicity. This method places so much power in the hands of the title-holder that it is an invitation to anarchy within the church government. Further, it involves a refusal to enforce firmly established equitable principles. * * * *The inequitable results which could follow from the 'formal title' theory would seem to outweigh any advantages it may have from a purely administrative standpoint.*" Note at 1131. (Emphasis added.)

20. "A court could deal with the dilemma created by the various readings of the establishment clause by treating it as of secondary importance. The court would then ground its choice of method primarily within the framework of the free exercise clause. Significantly, only the *Watson* v. *Jones* principles as modified by later case law are wholly compatible with the free exercise clause. All of the other tests conflict to greater or lesser extent with the free exercise of religion." Note at 1138.

"If the establishment clause is taken into account, the latest interpretation of that clause by the Supreme Court supports the selection of the principles derived from *Watson* v. *Jones*. Under this reading, the constitution demands strict neutrality by the state toward all churches. All the tests other than *Watson* v. *Jones* as modified erect special rules of decision for church property disputes, while the *Watson* v. *Jones* formula most closely approximates the general body of law applicable to all nonprofit voluntary associations." Note at 1138.

"*There is still another interpretation of the establishment clause, which seems most sensible in the context of church property disputes.* This view realizes that various interpretations of the establishment clause may conflict with each other, and with the free exercise clause. Therefore, it says, rather than applying each clause in isolation, an attempt should be made to reconcile them. * * *. *The test derived from* Watson v. Jones *is even more attractive under this theory. Alone of all the possible tests for resolving church property disputes, it maximizes freedom of exercise*

C. *The Washington Supreme Court Followed* Watson *and* Hull Church *in Recognizing That the Presbyterian Church Has a "Hierarchical Structure."*

Petitioners' contention that the Washington Supreme Court "unconstitutionally made a doctrinal decision" in finding that Respondent Church has a "hierarchical structure" is without merit. (Pet. 15)

Mr. Justice Brennan's concurring opinion in the *Church of God* case explains the limits of the approach adopted by this Court in *Watson* and *Hull Church* for determining church polity.

> "Under *Watson* civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, *unlike the identification of the governing body*, frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies that exercise general authority within a church *is a matter of substantial controversy*, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy. In other words, the use of the *Watson* approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined *without the resolution of doctrinal questions and without extensive inquiry into religious polity.*" 396 U.S. at 369.

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for both the church as a whole and its members, and impinges marginally, if at all, on traditional establishment concepts. This method represents a fair solution for both the church and the individual church member, and a workable accommodation between the interests of the state in property within its borders and the interests of the church in administering its property with a minimum of interference." Note at 1139. (Emphasis added.)

In a footnote, Mr. Justice Brennan added the following:

> "States following the *Watson* approach would have to find another ground for decision, perhaps the application of general property law, when identification of the relevant church governing body is impossible *without immersion in doctrinal issues or extensive inquiry into church polity.*" 396 U.S. at 370, n. 4.

Petitioners have tried to create the impression of a "substantial controversy" over the nature of the structure of the United Presbyterian Church, when in fact there is no such controversy at all.[21] While Petitioners' original Answer (R. 55) contained a "boilerplate" denial (based on lack of information or knowledge) that the United Presbyterian Church is a "hierarchical structure," the trial court's findings of fact to the contrary were never contested by Petioners.[22] Thus the Washington Supreme Court was not faced with a controversy about the structure of the United Presbyterian Church.

Moreover, in recognizing that the United Presbyterian Church has a hierarchical structure, the Washington Supreme Court did not immerse itself in doctrinal issues or inquire extensively into church polity. This was unneces-

21. See footnote 17 at page 25 of this Brief.

22. The trial court found as follows:

> "That under said constitution, rules and ecclesiastical law, the church government is the Presbyterian form of government, with the various components thereof constituting one united sovereign church and the units being integral parts of the sovereign church, and not independent or congregational." (FF IV, Pet. App. A-25)

In Petitioners' Opening Brief before the Washington Supreme Court, they did not assign error to the above Finding of Fact pursuant to Washington Supreme Court Rule on Appeal 1-43 which requires in relevant part: "No error assigned to any finding or findings of fact made or refused will be considered unless so much of the finding or findings as is claimed to be erroneous *shall be set out verbatim in the brief.*" (App. Op. Br. 11-16, R. 1147) (Emphasis added.) Moreover, Petitioners' Finding of Fact No. IV, proposed to the trial court, sets forth the hierarchical structure of the United Presbyterian Church. (App. Op. Br. 14, R. 1147)

sary, since the United Presbyterian Church is the same church involved in *Watson* and has the same type of church polity as the Presbyterian Church involved in *Hull Church*. Both of these cases recognized that determining that a national Presbyterian Church is hierarchical does not involve an unconstitutional inquiry into church doctrine or polity. As the Washington Supreme Court stated:

> "The church involved in that action [*Watson*] was Presbyterian, having precisely the same hierarchical structure as that involved in this action. There legal title was vested in the trustees of the local church; here it is vested in a corporation having trustees, but in both cases, under the church constitution, the right to control the use of the property is vested not in the trustees but in the Session, the Session in turn being subject to control by the Presbytery, the Presbytery by the Synod and the Synod by the General Assembly. The United States Supreme Court took notice of all these matters of church structure, obviously not regarding them as ecclesiastical or doctrinal in nature, but rather matters of agreement among the members concerning their self-government, which it was necessary to examine in order to determine the right to control the property." 79 Wn.2d at 370, 485 P.2d at 618.

The Washington Supreme Court did not conduct an unconstitutional inquiry into the polity of the United Presbyterian Church. The hierarchical nature of its polity was obvious from its Constitution, from *Watson* and *Hull Church*, from the trial court's undisputed findings of fact, and from previous opinions of the Washington State Supreme Court[23] and the courts of other states.[24]

23. See the discussion of the relevant Washington cases at pages 18-20 of this Brief.

24. See, *e.g.*, *Trustees of Pencader Presbyterian Church in Pencader Hundred v. Gibson*, 26 Del. 375, 22 A.2d 782 (1941); *Bramlett v. Young*, 229 S.C. 519, 93 S.E.2d 873 (1956); and *St. John's Presbytery v. Central Presbyterian Church of St. Petersburg*, 102 So.2d 714 (Fla. 1958). These cases, all of which involved Presbyterian churches, were cited with approval by this Court in *Hull Church*, 393 U.S. at 447.

D. *The Washington Supreme Court Correctly Construed* Hull Church *as Approving the "Rule of Action" Set Forth in* Watson.

Petitioners ambiguously assert that the Washington Supreme Court decided that *Hull Church* "follows *Watson v. Jones* in holding that civil courts can enforce ecclesiastical decrees." (Pet. 16) What *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 371, 485 P.2d 615, 619 (1971). (Pet. App. A-16) actually said was:

> "It would appear certain that [in *Hull Church*] the United States Supreme Court approved the rule laid down in *Watson v. Jones, supra,* that the decision of the highest tribunal of a hierarchical church to which an appeal has been taken should be given effect by the courts in a controversy over the right to use church property."

The narrow holding of *Hull Church* is that the First and Fourteenth Amendments do not "permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." 393 U.S. at 441. As discussed above at pages 13-18 of this Brief, however, *Hull Church* also clearly approves the "rule of action" set forth in *Watson* as one of several alternative approaches to resolving disputes over church property.

E. *The Washington Supreme Court Did Not Unconstitutionally Resolve a Controversy Over Religious Doctrine and Practice.*

In Section V of Petitioners' Argument, they assert that the Washington Supreme Court unconstitutionally resolved a controversy over church doctrine and practice "to divest the petitioner Laurelhurst Church corporation, governed by its statutory trustees, of its property." (Pet. 17)

In relevant context, the Washington Supreme Court stated as follows:

> "The appellants are not, as they contend, the record titleholders of the property. *The record title is in [the Laurelhurst Church], a corporation which by its bylaws is subject to the discipline of the United Presbyterian Church, and is governed by a Session which must act in accord with that discipline.* The appellants have withdrawn from that church, but according to the decision of the Presbytery of Seattle, from which no appeal was taken, they had no right to withdraw from the church as a body and take with them the name of the church and its property. The pastor, the trustees, and the members of the Session who withdrew forfeited their right to govern the affairs of the church when they did so, according to the decision of the highest tribunal to which an appeal was taken, and consequently the appellants have no right to control the use of the property." 79 Wn.2d at 373, 485 P.2d at 619. (Pet. App. A-18) (Emphasis added.)[25]

In the portion of the Washington Supreme Court's opinion quoted out of context by Petitioners, the Court simply recognized two undisputable facts: (1) the record title to the church property is in the Laurelhurst Church corporation (Pet 5), and (2) according to their own terms, the corporation's Bylaws are subject to the Constitution of the United Presbyterian Church.[26] Petitioners should not be allowed to repudiate their own corporate Bylaws, as they try to do in Section V of the Petition.

As shown by the language quoted above, the Washington Supreme Court did not "divest" the Laurelhurst Church corporation of its property. Rather, pursuant to the *Watson* "rule of action," the Court accepted as "final

25. The portion in italics was quoted out of context by Petitioners. (Pet. 17)

26. See the discussion above at pages 21-24 of this Brief.

and binding the determination of Respondent Presbytery that Petitioners no longer had any right to govern the Laurelhurst Church corporation or control the use of its property.

F. *The Washington Supreme Court Did Not Deny Petitioners Their Freedom of Religion.*

The Petitioners are and always have been free to withdraw individually from the United Presbyterian Church and to practice the religion of their choice. Control of the Laurelhurst Church property, not freedom of religion, is the issue in the present case. In Section VI of Petitioners' Argument (Pet. 17-18), as well as in the proceedings below, Petitioners have consistently ignored the fact that Respondent's form of government is Presbyterian, not Congregational. For example, at page 18 the Petition quotes from *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 254 Md. 162, 254 A.2d 162 (1969), but ignores the fact that the Maryland Court of Appeals determined that the parent Church of God was Congregational, not Presbyterian, in its polity with respect to church property.

Petitioners freely joined a Presbyterian Church. They voluntarily accepted its form of government, including its rules on the use and control of church property. They are free to resign individually, just as they joined individually. However, they have no right to take the Laurelhurst Church property with them.

G. *The State Court Cases Decided After* Hull Church *Are Not in "Irreconcilable Conflict" Because* Hull Church *Permits Alternative Approaches to Resolving Church Property Disputes.*

Petitioners' basic contention in their Supplemental Brief is that "[a] current review of the state court cases shows that they are in hopeless and irreconcilable conflict in their interpretation of *Hull*." (Pet. Supp. Br. 3). Based on Petitioners' fundamental misreading of *Hull Church*, they are trying to create a "hopeless and irreconcilable conflict," when in fact there is no conflict at all.

The cases discussed in Petitioners' Supplemental Brief are not in conflict because *Hull Church* permits several different approaches to resolving disputes over church property. As discussed above at pages 13-18 of this Brief, the civil courts are free to adopt any one of the following approaches, as long as they do not involve the courts in an unconstitutional inquiry into religious doctrine, polity, or practice:

1. Adopt the approach of *Watson* and accept as final and binding the ecclesiastical decisions made within (a) a church of hierarchical polity by the highest authority that has ruled on the dispute at issue and (b) a church of congregational polity by a majority of its members. In addition to the Washington Supreme Court, the Michigan, New Jersey, New York, and Pennsylvania Supreme Courts have followed this approach subsequent to *Hull Church*. *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 485 P.2d 615 (1971); *Berkaw v. Mayflower Congregational Church*, 18 Mich. App. 245, 170 N.W.2d 905 (1969), *cert. denied*, 400 U.S. 824 (1970); *Serbian Eastern Orthodox Congregation of "St. George," Elizabeth, N.J.*

v. Serbian Eastern Orthodox Congregation of "St. George," Elizabeth, N.J. (Diocese for Eastern States of America and Canada), 106 N.J. Super. 22, 254 A.2d 119 (1969), *cert. denied*, 397 U.S. 961 (1970), *reh. denied*, 397 U.S. 1058 (1970); *Second United Presbyterian Church of Johnstown v. Presbytery of Albany*, 35 A.D.2d 252, 315 N.Y.S.2d 428 (1970), *aff'd*, 28 N.Y.2d 772, 269 N.E.2d 918, 321 N.Y.S.2d 377 (1971), *appeal dismissed*, 92 S.Ct. 80 (1971); *St. John Chrysostom Greek Catholic Church of Pittsburgh v. Elko*, 436 Pa. 243, 259 A.2d 419 (1969), *cert. denied, Dober v. Elko*, 399 U.S. 920 (1970); and *St. Michael and Archangel Russian Orthodox Greek Catholic Church v. Uhniat*, 436 Pa. 222, 259 A.2d 862 (1969), *cert. denied*, 400 U.S. 823 (1970), *reh. denied*, 400 U.S. 930 (1970).

2. Resolve a church property dispute by applying "neutral principles of law, developed for use in all property disputes." The Georgia, Indiana, Maryland, and Ohio courts have apparently adopted this approach. *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E.2d 658 (1969); *cert. denied*, 396 U.S. 1041 (1970); *Merryman v. Price*, 22 Ind. 62, 259 N.E.2d 883 (1970), *cert. denied*, 92 S.Ct. 89 (1971); *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 254 Md. 162, 254 A.2d 162 (1969), *appeal dismissed, per curiam*, 396 U.S. 367 (1970); and *Serbian Orthodox Church Congregation of St. Demetrius of Akron v. Kelemen*, 21 Ohio 2d 154, 256 N.E.2d 212 (1970), *cert. denied*, 91 S.Ct. 54 (1970).

3. Pass special statutes governing church property arrangements in a manner that precludes state interference in religious doctrine. At least two recent cases have been based in part on this approach—*Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, *supra*, and *Second United Presbyterian Church of Johnstown v. Presbytery of Albany*, *supra*.

Petitioners' contention that *Hull Church* does not approve the *Watson* "rule of action" is further refuted by the fact that this Court denied certiorari in the Michigan, New Jersey, and Pennsylvania cases cited in paragraph 1 above, since all four cases adopt the *Watson* "rule of action."[27]

Moreover, contrary to Petitioners' contention (Pet. Supp. Br. 2) the New York case, *Second United Presbyterian Church of Johnstown v. Presbytery of Albany*, *supra*, is closely analogous to the present case. The New York case involved a dispute over church property arising out of a doctrinal dispute between the United Presbyterian Church and one of its congregations. The New York court recognized that the "Presbyterian Church is hierarchial [sic] in nature" and based its ruling in favor of the United Presbyterian Church on Section 17-b of the New York Religious Corporations Law, which provides in relevant part:

> "Whenever the presbytery having jurisdiction over a particular church in connection with the General Assembly of the United Presbyterian Church in the United States of America dissolves or declares extinct the particular church * * * the court shall have jurisdiction to grant an order to the effect that all property of whatever kind which may have belonged to, or have been held by, said church shall vest in the presbytery of jurisdiction * * *."

27. Petitioners failed to indicate that this Court has already denied certiorari in the two Pennsylvania cases. (Pet. Supp. Br. A-3).

In effect, this statute produces the same result as the "rule of action" in *Watson*—the church property remains under the control of the United Presbyterian Church, based on the decision of one of its presbyteries. As the New York court stated:

> "The decision of the presbytery that all assets be forfeited by appellant church, being a proper decision of a hierarchial [sic] polity based upon ecclesiastical law may be constitutionally enforced by the courts. (Watson v. Jones, 13 Wall. [80 U.S.] 679, 20 L.Ed. 666).
>
> "*Section 17-b of the Religious Corporations Law does no more than provide for such enforcement in a manner which interferes neither with the control of ecclesiastical polity nor church doctrine.*" 315 N.Y.S.2d at 431. (Emphasis added.)

This Court has denied certiorari in the two Pennsylvania cases, the Michigan case, the New Jersey case, and the New York case cited above, all of which are based on the *Watson* "rule of action." Respondents submit that this Court should similarly refuse to issue a writ of certiorari to the Washington Supreme Court, which also based the present case on *Watson*.

II. *The Present Case Is Not a Case of National Importance.*

Contrary to the impression created by Petitioners (Pet. 19), there is not a revolt brewing within the United Presbyterian Church. As of January 1972 there were 8,812 churches within the United Presbyterian Church. Since 1967 few churches, probably less than five, have been involved in litigation over church property. To extrapolate five churches into "many thousands of churches" and "congregations by tens of thousands" requires substantial imagination.

The national church involved in the present case is the same one involved in *Watson*. The principles of *Watson* have guided the United Presbyterian Church since 1872, just as those principles have guided Presbyterian churches in the State of Washington since 1898. As the Washington Supreme Court stated in its unanimous opinion in this case:

> "This Court has adopted the rule of *Watson v. Jones*, *supra*, in cases of this kind . . . . We see no reason to abandon it." 79 Wn.2d at 373, 485 P.2d at 619. (Pet. App. A-18)

This decision by the Washington Supreme Court is neither unusual nor of national importance. It simply is the sixth time since 1898 that the Washington Court has elected to adopt the principles of *Watson*.

Moreover, under the *Hull Church* and *Church of God* cases, state courts are free to adopt any one of several approaches to resolving church property disputes, including the reliance upon "neutral principles of law" advocated by Petitioners.[28] Contrary to Petitioners' contention, the Washington Supreme Court has not "set a precedent which, unless reviewed and corrected here, will plague many thousands of churches nationwide for years to come." (Pet. 19) Other state courts are free to ignore the present case and adopt one of the two acceptable alternatives to the *Watson* "rule of action."

28. See the discussion above at pages 13-18 of this Brief.

CONCLUSION

Petitioners have shown no "special and important reasons" for this Court to grant their Petition. There is no federal question of substance in this case which has not already been determined by this Court. Nor does the decision of the Washington Supreme Court conflict with applicable decisions of this Court or of other state courts. On the contrary, the Washington Supreme Court based its decision on the *Watson* "rule of action," one of the three approaches to resolving church property disputes permitted by *Hull Church*, *Church of God*, and other relevant decisions of this Court.

Even if this Court were to overrule *Watson*, *Gonzales*, *Kedroff*, *Hull Church*, and the concurring opinion in *Church of God* by *requiring* the application of "neutral principles of law" to resolve church property disputes, the result in the present case would not change.

For the foregoing reasons, the Petition should be denied by this Court.

Respectfully submitted,

PERKINS, COIE, STONE, OLSEN
& WILLIAMS
DOUGLAS P. BEIGHLE
RANDALL REVELLE
Attorneys for Respondents

SUPREME COURT, U. S.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1971

No. 71,563

JAMES R. ROHRBAUGH, *et al.*
Petitioners,

v.

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

PETITION FOR REHEARING

ALFRED J. SCHWEPPE
Attorney for Petitioners

April 12, 1972
Office and Post Office Address:
657 Colman Building
Seattle, Washington 98104
February 23, 1972

CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

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Lord Chief Justice Crew once said 300 years ago that the cause before him was a great and weighty cause fit for all of the judges in England to hear.

Comparably, this cause, we suggest, is a great and weighty cause for this court to hear on this petition for rehearing. The cause affects many churches and millions of people.

The undersigned counsel recognizes that petitions for rehearing are not often granted. But it does happen. He vividly recollects that when the petition for certiorari was denied in *Olmstead v. United States*, 275 U.S. 557 (1927), it was granted on a petition for rehearing (276 U.S. 609) prepared by the undersigned while professor of constitutional law at the University of Washington Law School in Seattle. After the original denial, Seattle counsel came to the undersigned and asked what else they could do. The undersigned suggested a petition for rehearing, although not then officially recognized in the rules with respect to certiorari. He was asked to prepare the petition for counsel, which he did, although his name does not appear on the record. The granting of that petition resulted in the landmark 5 to 4 decision in *Olmstead v. United States*, 277 U.S. 438 (1928). The dissenting opinions, on the side of the petitioners, later became the law of this court. At the twilight of his career the undersigned still considers the granting of that petition a high point in his professional life at the bar.

Quite frankly, the undersigned believed that the petition and reply in the present case showed the great urgency and importance of a further review of *Hull*, 393 U.S. 440 (1969), for the sharply divided state courts, especially after respondent's brief asserted that there are several alternatives besides "neutral principles of law" in determining church property disputes.

Present rule 58 on rehearing after denial of certiorari is restrictive in that it requires either new intervening circumstances or substantial grounds available to the petitioner although not previously presented.

In this case that is not an easy requirement to meet, but an effort will be made.

The petitioners kept the faith, as adjudicated by the trial court, whereas the respondents were adjudged to have made substantial changes in doctrine. Yet through judicial procedures below, inquiring deeply into church polity and structure, in violation of the First Amendment, the respondents are up to now held entitled to this valuable church property. Victory has gone to those not equitably nor morally entitled.

Respondents are now entitled to take over the property and are taking steps to do so unless this petition is granted.

The undersigned has ascertained that there are other Presbyterian Churches in the state of Washington which, because they insist on adhering to the centuries old Presbyterian confessional documents, as against the modernistic and substantially changed confession of 1967 of the national church, will lose their churches under the decision of the courts below unless this case is reversed for First Amendment violation.

One such case (*Hillcrest Presbyterian Church v. Presbytery of Seattle, Inc.*, King County, Washington, Superior Court No. 702,309) has already been decided on the authority of the present case below and is now being appealed. Other cases are in the making and in litigation elsewhere.

Since denial of the writ we have found no new decisions; but the sharp division of the state courts in their interpretation of *Hull, supra*, as summarized in our Reply Brief, with the majority of the state courts favoring peti-

tioners' position, calls urgently for a review.

We earnestly pray that such review be granted in this case. In *Gingsteel v. United States, supra,* the Court finally concluded that the issue was so important that the case should be heard. We hope the Court reaches the same conclusion here.

Respectfully submitted,

ALFRED J. SCHWEPPE
Attorney for Petitioners

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the foregoing Petition for Rehearing is presented in good faith and not for delay and that the petition is restricted to grounds specified in Rule 58.

ALFRED J. SCHWEPPE

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IN THE

Supreme Court of the United States

October Term, 1971

No. 71-563

JAMES R. ROHRBAUGH, *et al.*
Petitioners,

v.

THE PRESBYTERY OF SEATTLE, INC., *et al.*
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY BRIEF OF PETITIONERS

SCHWEPPE, DOOLITTLE, KRUG,
TAUSEND, BEEZER & BEIRLE
ALFRED J. SCHWEPPE
Attorneys for Petitioners

Office and Post Office Address:
657 Colman Building
Seattle, Washington 98104
February 23, 1972

CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

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PREFACE

After failing to do so in November, the respondents have now, under the court's January order, filed an answer to our Petition.

At the outset we suggest, after a careful reading of the Respondents' Brief in Opposition, that respondents' arguments in themselves furnish a convincing reason for the granting of the Writ.

STATEMENT OF THE CASE

We shall make first a general Reply and then specific ones.

Respondents (p. 2) completely evade, with a claim of

irrelevancy, a very uncomfortable fact for them. The case was tried below before *Hull*, 393 U.S. 440 (1969) by both sides on the issue of "substantial change in doctrine", which then appeared relevant. 76 C.J.S. Religious Societies, §70, p. 849, quoted on p. 9 of our Petition; *Presbyterian Church in the United States v. Hull Memorial Church*, 224 Ga. 61, 159 S.E. 2d 690 (1968), reversed 393 U.S. 440 (1969).

The trial court found that there was:

> ". . . abundant proof that substantial changes had been made in the doctrine of the church, that the Confession of 1967 departed from its historic, centuries old Presbyterian position and Statements of Faith, and that political and social pronouncements were made, to all of which loyal, conservative members of the church, and particularly the pastor and members of the Laurelhurst church could not in good conscience abide." Pet. Appendix A, p. A-2.

The trial court delayed until the first *Hull* decision in the Georgia case, 393 U.S. 440 (January 27, 1969), but did not wait for the second Georgia decision below on remand which awarded title to the local church as against the National Church, and the consequent second *Hull* decision, 396 U.S. 1041, denying certiorari.

Then, although holding that there was "abundant proof" of substantial changes in doctrine by the national church, the trial court concluded that, after *Hull*, this issue was not available, that the Washington State Supreme Court had followed *Watson v. Jones*, 13 Wall. 679 (1871) in several earlier cases, that as trial judge he should follow them, and that, in his view, the first *Hull* decision made *Watson v. Jones* applicable to this case. Petition, Appendix A.

Because of his knowledge of the facts in the record before him, he arrived at this conclusion "reluctantly". He said (Petition, Appendix A, p. A-9):

> "Reluctantly, for my sympathies are with Pastor Rohrbaugh and his congregation, I must conclude that plaintiffs are entitled to the relief sought, and it is so ordered."

His reluctance was based on the fact that he knew that for almost two centuries courts of equity in England and the United States (prior to *Hull*, 393 U.S. 440, (1969)) in church property disputes have sustained the position of those who adhered to doctrine as being in the right, and those who departed from doctrine as being in the wrong, regardless of majority or minority. This was finally authoritatively decided by the House of Lords in *Craigdallie v. Aikman*, 2 Blight 529 (1820).

The consequence of the lower court's decision and its affirmance by the Supreme Court of the State of Washington is that the church property is being given to the party in the wrong under traditional equitable principles and the property denied to those in the right under those principles.

To the end of time there can be no question as to the relative equities of the parties, established at the trial in 1968, prior to *Hull* (January, 1969).

This can never be "irrelevent" in the context of justice, although no longer available under *Hull* as a basis for adjudicating property rights.

The end result of the decisions below, unless reviewed by this Court, is to enable the National Church (represented here by the Presbytery) to force on the Lamrelhurst

Church and other dissenters similarly situated, the Confession of Faith of 1967, or else give up the church property. This is, with a vengeance, "establishment" of a confession and "establishment" of a church by a civil court, which the First Amendment forbids.

The trial court's Finding VI (Petition, Appendix D, p. A-26) expressly shows that the controversy arose out of, and turned on the objections to the General Assembly's new "Confession of Faith of 1967".

No other conclusion can be drawn except that the decision below "establishes" the Confession of 1967 and the National Church in violation of the First Amendment.

Although the "change of doctrine" issue is not available since *Hull* as a basis for adjudicating title and possession, fortunately the "neutral principles of law developed for use in *all* property disputes" (Italics supplied) required by *Hull* and applicable to this case, necessitate a reversal of the judgment below, or at least establish worthiness of a hearing in this Court.

It is manifest from a cursory reading of the trial court's Findings of Fact and Conclusions of Law (Petition, Appendix D) especially the Findings III, IX, X, XII (A-27, A-28) and Conclusions of Law II, III, IV (A-30, A-31), that the trial court, and the State Supreme Court on appeal, unconstitutionally inquired in detail into, and adjudicated, matters of church law and practice, which the First Amendment, as construed in *Hull*, unqualifiedly forbids.

Let us take, for example, Finding XII (Petition, A-28) and Conclusion IV (Petition, A-31) that under the Con-

stitution and Book of Order there is "no provision . . . for a congregation or church to withdraw from the denomination. There are provisions for persons to withdraw individually;" and that "the acts of defendants in attempting to withdraw from the denomination . . . . are in violation of the rules, procedures and laws of the United Presbyterian Church, in the United States of America."

How could then be made a more detailed investigation of "religious doctrine and practice", *Hull*, 343 U.S. 440, 449, or a more "extensive inquiry into religious polity", (Mr. Justice Brennan, concurring in the companion case to *Hull*, namely, *Maryland and Virginia Churches v. Sharpsburg Church*, 396 U.S. 267, 370)?

Actually, if one could constitutionally make this inquiry into internal church polity (which one cannot), it would be clear that the failure to prohibit congregations from withdrawing does indeed permit withdrawal.

Even prior to *Hull*, the rule was succinctly stated by the Tenth Circuit as far back as 1943 in *First English Lutheran Church v. Evangelical Lutheran Synod of Kansas*, 135 F.2d 701, 702 (1943):

> "Extended argument is submitted in respect of the power of the church to withdraw from the Synod of Kansas without its consent. A civil court will not review acts of a religious organization relating solely and exclusively to an internal ecclesiastical affair for the sole purpose of asserting whether they are regular or in accordance with the polity, discipline, or usages of the organization." (citing, among others, *Watson v. Jones*, on which Respondents' counsel rely.)

The same ruling was made by Maryland's highest court. (254 A.2d 162, 170 (1969) quoted on p. 18 of our Peti-

tion, appeal dismissed for want of a substantial federal question, 396 U.S. 367 (1970)).

The foregoing survey of the trial court's Findings and Conclusion is, in essence, a complete Reply to Respondents' Brief in Opposition, and convincingly establishes deep inquiries into "religious doctrine and practice"—all major violations under *Hull* of First Amendment principles—certainly, we suggest, sufficiently major to justify a review by this Court.

However, we shall try to add some brief pointed, specific replies.

I.

Respondents' Brief, p. 15-17, takes the untenable position that Hull *allows several alternatives to "neutral principles of law" in determining church property disputes.*

As a premise, we read the language of *Hull* to *require all* church property disputes to be settled *exclusively* by "neutral principles of law."

> "And there are neutral principles of law, developed for use in *all* church property disputes, which can be applied without establishing churches to which property is awarded". 393 U.S. 440, 449) Italics supplied.

We construe the use of secular principles to be an absolute requirement because of the word "all", which we underline. Respondents' counsel, on the other hand, contrue it to be permissive by underlining on Respondents' Brief, p. 15, the word "can", and they pose alternative approaches, including the "Watson approach" which they must defend because used below, even though they recognize that it requires a court to determine whether the church organizational structure is hierarchical and ulti-

mately requires a court to confirm an ecclesiastical decision.

Respondents say (p. 16), not even timorously, that the Maryland Court had "incorrectly" interpreted *Hull* as *re-requiring* that civil courts dispose of all church property disputes upon "neutral principles of law". This is *ipse dixit*, without foundation. On the opinion filed by the Maryland Court, this court dismissed, for want of a substantial federal question, 396 U.S. 367, which is a decision on the merits. The separate concurring opinion of three Judges (Justice Brennan writing, and Justices Douglas and Marshall concurring) even though a helpful discussion (it is helpful to us) is not the decision of the nine-man Court and cannot, as erroneously urged by counsel, modify the *absolute* language of *Hull*. That can be done only by the entire Court, if and when it elects to review this case.

This construction of *Hull*, that there are alternatives to "neutral principles of law" in deciding church property disputes, runs all through Respondents' argument. We submit that it is palpably erroneous, and that this contention alone justifies a hearing by the Court to clear up this added confusion about *Hull*.

As we said in the opening paragraph of this Reply, the Respondents' themselves furnish convincing reasons why this Court should hear this case.

Are there, as counsel contend, other than "neutral principles of law, developed for use in *all* church property disputes"? If so, the churches of the United States anxiously await an authoritative decision.

Counsel rests on the proposition that the national church

is an hierarchical church. They even got the trial court (over denial in the Answer which Respondents admit (Respondents' Brief, p. 29) raised the issue) to make Findings III and IV (Petition, A-24, A-25) that it is an hierarchical church; and the State Supreme Court followed along (Petition, Appendix B., p. A-11 and A-15). To do this, this trial court had to examine the internal religious structure of the church, as set forth in its Book of Order. Exhibit 1. The Book of Order is admittedly a religious book. See excerpts in Petition, Appendix F, pp. A-37, A-38.

We think this determination, derived from an examination of the internal religious structure of the church in its Book of Order, violates *Hull*, as well as *Watson v. Jones*.

If a trial court may lawfully make such an internal examination of the religious structure of a church in this case, it can do so in any case.

We pointed out below (See Petition, p. 16) that the Court could not constitutionally make the hierarchical determination, admittedly put in issue by our answer (Respondents' Brief, p. 29) and pointed to Professor Casad's comment in XXVII, *Washington and Lee Law Review*, 44-69, where Professor Casad said (p. 68)

> "Mr. Justice Brennan's comment apparently excludes the Watson approach in such cases, for to classify a church as congregational or hierarchical inevitably involves an inquiry into religious law, usage, doctrine or polity."

This warning was ignored below and the First Amendment violated.

II.

On page 21, Respondents urge that Respondents would prevail even if "neutral principles of law" were to govern the Washington State Supreme Court's decision.

They rather lamely point to Article III of the Articles of Incorporation which, in stating object and purpose, indicates that the corporation will maintain" . . . the belief and practice of the United Presbyterian Church of North America . . ."

This, of course speaks as of the time the Articles were filed. It in no way speaks of a later date when, after merger, the national church changed doctrine.

Similarly, they refer to By-Laws adopted January 27, 1959. They again speak as of the time of their adoption, and not as of a later date. This argument is subject to the same fallacy.

The complete answer is, of course, that if this Court follows the locus of title rule adopted by the majority of recent state decisions in their interpretation of *Hull*, and also by the law reviews cited below, the corporate officers and trustees of the Laurelhurst Church selected pursuant to state statute will control the property. Inquiry as to who under church law and polity can also select these officers is forbidden by *Hull*.

The Supreme Court of the State of Washington compounded this error, as pointed out under point V of our Petition (p. 17) that the corporation "by its by-laws is subject to the discipline of the United Presbyterian Church and is governed by a session which must act in accord with that discipline." To make this ruling, the state court had to go into the internal church law and practice to discover the

session, which *Hull* forbids. At 393 U.S. 440, 449, *Hull* specifically prohibits "resolution by civil courts of controversies over religious doctrine and *practice*". The Washington court has unconstitutionally invaded the area of church law and *practice*.

III.

On page 25, Respondents repeat the contention that the Washington Supreme Court is not required by this Court to rely exclusively on "neutral principles of law".

We have above pointed out the fallacy of this argument respecting *Hull*, and urged that this claim of Respondents alone should convince this Court to grant the Writ, in order to clarify this issue for churches in this country.

IV.

Counsel are unhappy (Respondents' Brief, p. 26) with our quotation from the Yale Law Journal *as set forth on page 14 of our Petition, which says that* Watson v. Jones *is "the most objectionable rule," because it "gives the church plenary power over church property and allows the church to use the courts to enforce its decrees."*

Let us leave aside for the moment the present case in which the court found a "substantial change in doctrine". Let us suppose that a national church, after centuries of contrary belief, rejects the divinity of Christ. Under *Watson* as construed by Respondents and the courts below, the national church can seize control of all church properties, and exclude all dissenters.

Need more be said?

The *Yale Law Journal* points out that the "formal title rule" is the best approach because it involves no consideration of "theology or the administrative rules of the church, but looks solely to the locus of the title."

This salutary approach is the one recently adopted by Maryland, Georgia, Ohio and Indiana, and is supported by 54 *Iowa Law Review* 899, 907 (1969), XXVII *Washington and Lee Law Review* 44-69, especially p. 68 (1970), as well as by the *Yale Law Journal*.

V.

On page 37 respondents urge that the case is not of national importance.

We respectfully submit that respondents have convincingly proved exactly the opposite and raised arguments which cry for immediate resolution by this Court for the benefit of all the churches in the United States, including the petitioner, Laurelhurst Church. One can except the Roman Catholic Church, since it is common knowledge that all property titles are in Bishops as corporations sole.

Even limiting the importance to Presbyterian Churches (which, in view of Respondents' claims, one cannot do), the record shows (see Petition, p. 7) that the new "Confession of 1967" was adopted with a substantial dissenting vote. Assuming counsels' figures of 8812 Presbyterian Churches in the National Church, it is reasonable to conclude that (in addition to a number of Presbyterian churches actually litigating and awaiting additional light from this Court) there are probably thousands of unhappy Presbyterian churches waiting in the wings.

Forcing on them the new substantially changed Confession of 1967, on penalty of otherwise losing their churches, is to them an intolerable interference with their freedom of religion under the First Amendment. (See Petition, pp. 17-18).

CONCLUSION

Unprepared to accept counsel's repeated contention that under *Hull* there are alternatives to "neutral principles of law in resolving church property disputes" (in Respondents' Brief, p. 39, counsel again refer to "three approaches") we respectfully urge (strongly supported, we think, by the Respondents' own arguments) that the problems raised by *Hull* on this record under the First Amendment should by all means be heard by this Court.

If at this juncture the points raised in our Petition are again read and considered, we sincerely trust, in the light of Respondents' unusual claims about *Hull*, that this Court will see the urgent need for review.

We respectfully pray that the Writ of Certiorari issue.

Respectfully submitted,

SCHWEPPE, DOOLITTLE, KRUG,
TAUSEND, BEEZER & BEIRLE
ALFRED J. SCHWEPPE
Attorneys for Petitioners